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Report of the open-ended intergovernmental working group on the draft United Nations declaration on the rights of peasants and other people working in rural areas

Chair-Rapporteur: Angélica C. Navarro Llanos

Summary

The Chair-Rapporteur has the honour to transmit to the members of the Human Rights Council the report of the open-ended intergovernmental working group on the draft United Nations declaration on the rights of peasants and other people working in rural areas, submitted in accordance with Human Rights Council resolutions 21/19 and 26/26.

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Contents

		Page
I.	Introduction	3
II	Organization of the session	3
	A. Election of the Chair-Rapporteur and the Vice-Chair	3
	B. Attendance	4
	C. Documentation	4
III.	Panel discussion	5
	A. Panel I. Civil, political, economic, social and cultural rights of peasants and other people working in rural areas and gaps	5
	B. Panel II. Rights of peasants and other people working in rural areas in other international instruments and gaps	8
IV.	General statements	9
V.	First reading of the draft United Nations declaration on the rights of peasants and other people working in rural areas	11
VI.	Conclusions	18
VII.	Recommendations of the Chair-Rapporteur	19
VIII.	Adoption of the report	19
Annexes		
I.	Agenda	20
II.	List of speakers for panel discussions	21

I. Introduction

1. The open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas (hereinafter, "the working group") was established by the Human Rights Council in its resolution 21/19 and recalling Council resolutions 13/4, 16/27 and 19/7, with a mandate of negotiating, finalizing and submitting to the Human Rights Council a draft United Nations declaration on the rights of peasants and other people working in rural areas. Council resolution 26/26 of 23 June 2014 mandated the working group to hold its second session for five working days before the twenty-ninth session of the Council; requested the Chair-Rapporteur of the working group to conduct informal consultations with Governments, relevant special procedures of the Human Rights Council, regional groups, intergovernmental organizations, United Nations mechanisms, civil society and representatives of peasants and other people working in rural areas; requested the Chair-Rapporteur of the working group to prepare a new text on the basis of the discussions held during the first session of the working group, the draft declaration presented by the Advisory Committee, and the informal consultations to be held, and present it to the working group at its second session for consideration and further discussion. The resolution also requested the Office of the United Nations High Commissioner for Human Rights to provide the working group with the human, technical and financial assistance necessary for it to fulfil its mandate; and requested the working group to submit to the Council for consideration at its thirtieth session a report on progress made, which should be published as an official document in all the official languages of the United Nations.

2. Following the resolution, the working group held its second session from 2 to 6 February 2015.

3. The second session was opened by Craig Mokhiber, Chief, Development and Economic and Social Issues Branch on behalf of the United Nations High Commissioner for Human Rights on 2 February 2015. Mr. Mokhiber noted that people working in rural areas were more vulnerable to emergencies, diseases and conflicts because of the multiple forms of discrimination they faced from long-term failures by States to protect, respect and fulfil their rights. Mr. Mokhiber highlighted that people working in rural areas also faced structural inequalities that often impacted upon small-scale farmers' abilities to protect agricultural values, determine prices and access markets for agricultural production, as well as to facilitate biological diversity.

II Organization of the session

A. Election of the Chair-Rapporteur and the Vice-Chair

4. At its second session, on 2 February 2015, the working group re-elected Ms. Navarro Llanos (Plurinational State of Bolivia) as its Chair-Rapporteur, by acclamation. Guatemala, on behalf of the Latin American and Caribbean Group, stated that it had nominated Ms. Navarro Llanos based on the leading role of the Plurinational State of Bolivia in moving the working group forward and her leadership in the first session of the working group and intersessional informal consultations. Guatemala further underscored that Ms. Navarro Llanos possessed all the necessary credentials to successfully carry out and accomplish her mandate.

5. Owing to the ill health of Ms. Navarro Llanos, the 5th meeting of the session (3 February 2015, morning) was suspended and the Chair-Rapporteur proposed electing a

Vice-Chair as a temporary measure to ensure continued smooth proceedings of the rest of the second session of the working group. The 5th meeting of the session was resumed in the afternoon. A representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR), on behalf of the Secretary-General of the United Nations, opened the meeting and, hearing no objection on the Chair's proposal, proceeded to the election of a Vice-Chair. Guatemala nominated Luis Espinoza (Ecuador). With no other nominations, Luis Espinoza was elected as Vice-Chair of the open-ended intergovernmental working group on the draft United Nations declaration on the rights of peasants and other people working in rural areas, and he assumed the responsibility for the rest of the second session of the working group as a temporary measure. The Vice-Chair chaired the 5th, 6th and 7th meetings.

B. Attendance

6. Representatives of the following States Members of the United Nations attended the meetings of the working group: Afghanistan, Algeria, Austria, Argentina, Bahrain, Bangladesh, Plurinational State of Bolivia, Botswana, Brazil, Chile, China, Colombia, Cuba, Costa Rica, Czech Republic, Ecuador (on behalf of the Latin American and Caribbean Group), El Salvador, Egypt, Ethiopia, Finland, France, Germany, Greece, Guatemala (on behalf of the Latin American and Caribbean Group), Italy, India, Indonesia, Iran (Islamic Republic of) (on behalf of the non-aligned movement), Iraq, Ireland, Japan, Jordan, Kuwait, Kyrgyzstan, Republic of Korea, Lao People's Democratic Republic, Latvia (on behalf of the European Union), Luxembourg, Malaysia, Mexico, Morocco, Myanmar, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Russian Federation, Romania, Senegal, South Africa, Spain, Sri Lanka, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

7. The following non-Member States were represented as observers: Holy See.

8. The following intergovernmental organizations were represented at the meetings of the working group: the European Union and the Food and Agriculture Organization of the United Nations (FAO).

9. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented: Foundation Bread for All, Center for Legal and Social Studies, Europe – Third World Centre, Friends World Committee for Consultation, Foodfirst Information and Action Network, Programme on Women's Economic, Social and Cultural Rights, Quaker United Nations Office, International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations, Réseau International des Droits Humains, VIVAT International, United Villages and American Association of Jurists.

C. Documentation

10. The working group was provided with the new text of the draft declaration (A/HRC/WG.15/1/2) as well as the following documents:

(a) Resolution 21/19 on the promotion and protection of human rights of peasants and other people working in rural areas;

(b) Resolution 26/26 on the promotion and protection of human rights of peasants and other people working in rural areas;

(c) Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas (A/HRC/19/75);

(d) Report of the Chair-Rapporteur on the first session of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas (A/HRC/26/48).

Adoption of the agenda and organization of work

11. In her opening statement, the Chair-Rapporteur thanked the delegation of Guatemala and the Group of Latin American and Caribbean Countries for her nomination as Chair-Rapporteur and welcomed their encouraging remarks about the working group. The Chair-Rapporteur informed the participants that two informal consultations had been held on 12 November and 4 December 2014. She also noted that all relevant information regarding the working group could be found on the OHCHR website. In referring to the draft declaration before the working group, the Chair-Rapporteur informed the working group participants that the programme of work would include two thematic panels, with eight panel participants. She noted that one panel would discuss the civil, political, economic, social and cultural rights of peasants and other people working in rural areas and gaps and the second panel would focus on rights of peasants and other people working in rural areas in other international instruments and gaps. The Chair-Rapporteur noted that, after the panel discussions, there would be an opportunity for general statements, followed by the first reading of the new draft of the declaration on the rights of peasants and other people working in rural areas. The Chair-Rapporteur highlighted that no list of speakers would be provided during the general statements, as the session would be open to all participants wishing to take the floor. She also highlighted that the reading of the draft declaration would be done in five groups of articles: the first would include articles 1 to 6, the second, articles 7 to 14, the third, articles 15 to 18, the fourth, articles 19 to 23, and the fifth, articles 24 to 30 of the draft declaration. The reading would take place over three and a half days and would be open to the floor. The Chair-Rapporteur also noted that there would be no public consultation at the first meeting of the last day and informed the participants that the final report would include: details of summaries of the debate, summaries of the panel discussions and a summary by the Chair-Rapporteur. The Chair-Rapporteur noted that she had conducted informal consultations with delegations and regional and political groups, and that she looked forward to fruitful group work based on the various views of the participants.

12. The Chair-Rapporteur noted the basic principles for conducting the session of the working group, namely transparency, inclusiveness, accountability and objectivity.

13. The Chair-Rapporteur asked if there were any opposition to the programme of work and, hearing no objections, declared the programme to be adopted.

III. Panel discussion

A. Panel discussion I. Civil, political, economic, social and cultural rights of peasants and other people working in rural areas and gaps

14. One panellist noted that the great majority of the rights in the draft declaration were not new rights, with many of them having been recognized in other international human rights instruments. The issue of small food producers was raised, as was the need for the recognition of the part they played in feeding the planet. It was also argued that small food producers needed to be informed about their rights and that the draft declaration, if it were

to be adopted, would help facilitate that transfer of knowledge. Some panellists argued that the right to water should include the right to water for irrigation use and should not be limited to water for sanitation or drinking purposes.

15. A number of panellists highlighted the need to protect peasants' civil and political rights, noting that often peasants lacked access to justice and were not given the same protection as to others. They were often persecuted, detained, arrested or subjected to violence upon the expression of their right to freedom of association and to protest. One panellist also noted that cattle breeders usually worked in different countries and therefore crossed international borders, which often meant their freedom of movement needed to be protected by all States concerned.

16. One panellist noted that indigenous peoples had historically been forgotten and that more emphasis needed to be placed on the relationship between peasants and indigenous people as they were often one and the same thing. They also noted that the vision of Mother Earth of indigenous peoples should be part of the declaration. Another panellist noted that cultural rights, including traditional forms of knowledge, had not been adequately protected in international law. However, there was a growing body of international law, such as article 15 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 21 (2009) of the Committee on Economic, Social and Cultural Rights on the rights of everyone to take part in cultural life on that article, the reports of the Special Rapporteur on the realization of economic, social and cultural rights and various multilateral treaties on biodiversity, cultural heritage and intellectual property, that recognized the right to cultural identity, including traditional forms of knowledge, and the obligations of States to respect, protect and fulfil cultural rights.

17. Some panellists noted that it was essential to include the principles of gender equality and non-discrimination in the draft declaration, as those were fundamental principles of international human rights law. It was emphasized that peasants and other people working in rural areas were frequently unable to enjoy human rights on an equal basis. International human rights mechanisms had observed that gender-based discrimination against rural women was widespread. It was also underlined that intersectional and compound forms of discrimination must be identified and remedied. Peasants and people working in rural areas were diverse and might be confronted with discrimination on the basis of several different grounds: gender, age, ability, socioeconomic status, ethnic origin, religion, etc. Intersectional forms of discrimination were quantitatively and qualitatively different from discrimination on a single ground and could give rise to mutually reinforcing violations of several different human rights. It was further noted that international law requires that both formal (de jure) and substantive (de facto) equality be guaranteed and that direct and indirect discrimination were effectively prevented and remedied. That necessitated the adoption of positive measures — including, where necessary, temporary special measures —to redress prior disadvantage and to ensure real equality of opportunity. Two panellists argued that rural women faced specific discriminatory barriers to equal access to productive land and resources, such as customary systems of land titles which frequently denied women direct rights of ownership or inheritance. They also noted that the Committee on the Elimination of Discrimination against Women was in the process of adopting a general recommendation on article 14 of the Convention on the Elimination of All Forms of Discrimination against Women that explicitly recognized rural women's rights to equality with respect to reproductive rights and health care, social security programmes, training and education, self-help groups, community activities, credit, adequate living conditions, prevention of gender-based violence, succession rights, inheritance and land rights.

18. It was also noted that international obligations concerning the availability, accessibility, adaptability and acceptability of education had not been adequately

implemented in rural areas. The international legal framework concerning the right to education was well developed in international law; however, the United Nations Educational, Scientific and Cultural Organization and other sources had noted that rural areas often lagged behind other regions in terms of the availability and accessibility of good-quality education. The right to education, as contained in article 26 of the Universal Declaration of Human Rights and article 13 of the International Covenant on Economic, Social and Cultural Rights, required States to ensure that formal and non-formal education was available and accessible to all on the basis of equality. Measures must be taken to ensure that every level of education from early childhood education to universal primary education, secondary and vocational education, tertiary education, and continuing and non-formal education, such as literacy and livelihood programmes, were effectively available and accessible without any discrimination.

19. It was emphasized that the right to education for peasants and people working in rural areas must be respected, protected and fulfilled and that the draft declaration should more adequately reflect the general international legal framework in that respect, while also highlighting the obligation (contained in draft article 28 of the declaration) of States to adapt education to the specific needs of peasants and people living in rural areas.

20. Some panellists noted that peasants' rights to health and a clean environment were often negatively affected by the use of chemicals. They noted that it was important that peasants had the right to control the use of pesticides and chemical products. They further noted that peasants should have the right to know what health problems could be caused by use thereof, such as cancer, diabetes and high blood pressure. One panellist highlighted the need for peasants to have a right to keep their own seed and to be able to take decisions not to use genetically modified organisms. Some panellists noted that peasants could not control market prices alone, as prices were also determined by the level of demand, and that their rights to a decent income and an adequate standard of living should be protected.

21. During the panel discussions, the Chair-Rapporteur informed the participants that, in her view, new human rights were often created and rights had been adapted, that intersectional discrimination against most vulnerable groups was common, and that a positive connotation of the word "peasant" was being led from the grass roots, as well as in the working group. The Chair-Rapporteur also noted that the incorporation of the concept of "Mother Earth" in the declaration could be included on the basis of previously accepted language.

22. In relation to a number of questions provided by the participants, panellists noted that States had the obligation to not remove peasants from their lands and to help facilitate food aid. They also had the obligation to protect them and to protect the prices of agricultural products so that peasants could access households and food. They noted that States must have the right to establish agricultural policies to further enable work with sustainable methods and sustainable development.

23. One panellist noted that the United Nations system as far back as 1948 had already declared the right to food and the right to an adequate standard of living for peasants and other people working in rural areas and that those rights had also been enshrined in the International Covenant on Economic, Social and Cultural Rights as well as in FAO instruments. Some panellists also highlighted the difference between individual and collective rights and their view that the great majority of the rights proposed were individual rights, which could only be meaningfully exercised collectively. One panellist noted that there were already examples of discrimination faced by various groups, such as indigenous peoples, persons from the Roma community and persons of African descent, and this was an opportunity to expand on what was meant by equality and non-discrimination within the context of specific groups. Another highlighted that anti-discrimination and equality rights had both negative and positive action, and that there was

a level of interpretation where every right was seen as having both negative and positive obligations attached to them. All the panellists argued that there was a need for a United Nations declaration on the rights of peasants and other people working in rural areas and urged that the text of the declaration be comprehensible and understandable in order for peasants to enjoy their rights.

B. Panel discussion II. Rights of peasants and other people working in rural areas in other international instruments and gaps

24. Two of the panellists highlighted the various applicable provisions of international law and the United Nations human rights mechanisms, including the special procedures, and FAO guidance on the promotion of the right to food. They also noted that the Committee on Economic, Social and Cultural Rights, in its general comment No. 12 (1999) on the right to adequate food, explained that the right to food included access to adequate food or means to obtain it: the availability of safe and nutritious food could be obtained through cultivation of land and therefore access to natural resources was fundamental dimension of the right to adequate food.

25. One expert noted that the United Nations Declaration on the Rights of Indigenous Peoples and the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security re-emphasized human rights principles such as human dignity, gender equality, participation, transparency, accountability and rule of law, and that the FAO guidelines furthermore included in its general principles the duty of States to respect, safeguard and promote legitimate tenure rights. The guidelines also addressed, inter alia, restitution and redistribution of land, fisheries and forests, including the possibility to introduce limits on land property. It was clear that the intention of States when adopting those guidelines was not to create new rights but to give practical guidance in terms of policies and measures regarding the compliance of States with their obligations on the right to food. At the same time, it was clear that those guidelines represented an unprecedented international consensus about what States should do with respect to responsible governance of tenure. It was argued that this had contributed enormously to developing international law and what still needed to be clarified were the entitlements of the rights holders, such as the landless, peasants, artisanal fishers and nomadic pastoralists, with respect to land and natural resources, so that there was finally legal certainty about their rights to land and natural resources that could be claimed, including through the courts.

26. One expert discussed extensively the various International Labour Organization (ILO) conventions that supported the call for a declaration on peasants and other people working in rural areas. These included ILO Right of Association (Agriculture) Convention, 1921 (No. 11), Plantations Convention, 1958 (No. 110), Rural Workers' Organisations Convention, 1975 (No. 141), Indigenous and Tribal Peoples Convention, 1989 (No. 169), Safety and Health in Agriculture Convention, 2001 (No. 184) and those related to workers' rights. The panellist highlighted the various workers' rights in those conventions, such as freedom of as ociation, the elimination of all forced or compulsory labour or child labour, the right to organize for agricultural workers, the obligation of States to actively encourage agricultural unions and ensure that national laws did not inhibit the work of those organizations, and detailed guidance on minimal wages, maternity protection, labour inspection, housing and medical care. She also argued that protection gaps remained, particularly in relation to migrant workers and rural women who were often subjected to sexual harassment in the workplace.

27. One expert explained that most of the rights introduced by the draft declaration and referred to as "new rights" were not completely "new" in international law, for they

reflected obligations that States had already undertaken in a number of international instruments. She noted that instruments for the protection of the environment and cultural heritage imposed on States the obligation to respect and protect traditional cultural practices of peasants and other people working in rural areas and to adopt measures to safeguard their access to natural resources, including lands and seed. She also noted that the right to participation and the principle of free, prior and informed consent were entrenched in a number of international instruments, some of them widely ratified, such as the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the International Treaty on Plant Genetic Resources for Food and Agriculture and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity. The panellist also explained that international courts had increasingly recognized those rights and a number of States had already incorporated them into their national legal systems. She expressed her opinion that it was fundamental that the Human Rights Council compiled the existing legal guidance into one single instrument so as to secure the realization of the rights of peasants and other people working in rural areas all over the globe.

28. A number of participants asked the panellists to elaborate on the right to land and its consequences for States obligations. One panellist noted that normative gaps remained in relation to the right to land and that land should be recognized among the fundamental rights, as it was vital to rural communities' existence. She also noted that land was often privatized, sold and marketed without due attention to the fact that all human beings need land to live.

IV. General statements

29. Many delegations noted that they would not be able to provide comments on the draft declaration owing to the tight time frame since receiving the text, and therefore their comments and positions would be preliminary. For the same reason, many States who attempted to engage noted that they had to reserve their positions on the draft. A number of States highlighted their concerns regarding rights that were not already established as international human rights. They also raised concerns regarding the elaboration of existing human rights in the new draft declaration, and their reach beyond the agreed language. A number of delegations expressed concerns about the procedural process regarding the first draft declaration circulated by the Human Rights Council Advisory Committee. They argued that the Council had not mandated the drafting of the declaration and voiced concern regarding the scope and length of the latest version of the draft declaration. A number of States argued that the draft declaration focused too much on the rights of indigenous peasants and that, by singling out that group, others could be discriminated against. One State noted that the free, prior and informed consent principles were not appropriate in the draft declaration. Another delegation stated that the Human Right Council was not the right forum for a declaration on peasants and other people working in rural areas. All delegations stated their willingness to participate in the working group in a constructive manner in order to find common ground and discuss appropriate ways forward.

30. A number of States highlighted their support for a United Nations declaration that specifically focused on the rights of peasants and other people working in rural areas, as a new human rights instrument. They argued that was due to the vulnerability of peasants and other people working in rural areas as a group and because they represented over a billion persons. Those States highlighted the mandate given by the Human Rights Council to the working group in resolutions 21/19 and 26/26 to negotiate, finalize and submit to the Council a draft United Nations declaration on the rights of peasants and other people

working in rural areas. They also stressed that the draft declaration was provided through informal consultations and collaboration through views from the first session of the working group held by the Council. A number of States noted that there was a need for delegations to come together to find a consensus on the text of the draft declaration and one State argued that this should be based on the principle of international solidarity. Many States congratulated the Chair-Rapporteur on her re-election and thanked her for her ongoing work on the draft declaration.

31. A number of NGOs highlighted their support for the new text of the draft declaration, noting they were satisfied with the new length and scope of the draft text. They welcomed the inclusion of civil and political rights and their application to the specific needs and realities of peasants. They welcomed the recognition of important rights, such as the right to land, the right to seed or the right to biological diversity, and noted that those so-called "new" rights were already agreed upon in other international instruments and that at one point all rights had been considered new. They also welcomed the inclusion of specific State obligations for each article and a general reference to extraterritorial obligations and non-State actors. Several NGOs noted that an effort had been made to use, as much as possible, agreed language and hoped that this would provide a more suitable basis for the negotiations and help all States to engage constructively. Furthermore, they recalled the importance of the declaration to better protect the rights and improve the livelihoods of millions of peasants, fisherfolk, pastoralists, nomads and others peoples working in rural areas who were victims of multiple forms of discrimination and human rights violations. They also emphasized that the adoption of the declaration would ultimately reinforce food security and food sovereignty at the global level, and thus benefit all humanity.

32. The participants agreed that there was a need to improve the situation of peasants and other people working in rural areas. In particular, some participants noted that extreme poverty, hunger and malnutrition were concentrated in rural areas, despite peasants' substantial contribution to food security and food sovereignty. A number of participants also highlighted that 75–80 per cent of people affected by hunger and malnutrition were people working in rural areas and that peasants experienced discrimination in many forms. Participants also argued that women were especially vulnerable due to factors such as age, gender, marital status, indigenous and peasant identity. It was further noted that other challenges facing peasants included the denial of their means of livelihood, and their ability to control their own means of production and to set market prices for their products. The participants argued that those issues were detrimental to the livelihoods of peasants and other people working in rural areas.

33. A number of delegations and participants noted that the rights under discussion already existed as civil, political, economic, social and cultural human rights. They noted that economic, social and cultural rights such as the right to food, health, water, and education were regularly denied because States had often underinvested in facilities for peasant communities. They also noted that civil and political rights were denied because peasants who organized protests were often subjected to imprisonment, detention, laws and government policies that were used to limit their freedom of expression and association.

34. Some participants noted their support for the right to water and the need to widen the scope to include water used in agricultural production. They argued that, in developed countries, that right was already available, but it was being denied to small-scale famers operating in developing countries. Other States argued that further analysis was needed of the elaboration of already agreed international language in relation to the right to water and sanitation.

35. A number of participants highlighted the various forms of discrimination faced by peasant women, owing to the lack of education available to women working in rural areas.

It was also argued that, if women were to be able to gain access to education, they would be able to fully participate and better fulfil their human rights. One participant also noted that some of the work that peasant women undertook was often invisible and limiting their access to education. They furthermore argued that States must address structural problems through targeted policies if they were to improve access to education. Another participant noted that women faced discrimination based on land policies and cultural practices, as they were often landless or culturally excluded, as land titles were often registered to the men in the family. The increasing price of land was also highlighted by one participant, who noted that it was for that reason that many in developed countries could not become small-scale farmers and that government policies were hindering their ability to work in rural areas. A number of NGOs noted that women should be specially recognized throughout the declaration because they are the poorest among the food-insecure peasants, and disenfranchised in entitlement to land and other rights. One NGO highlighted the need for the draft declaration to include miners and communities living in mining areas, and to take into account States and non-State actors' responsibilities and obligations towards them. Another NGO called for the declaration to include specific State obligations to respect, protect and fulfil the rights of peasants and other people working in rural areas, the State extraterritorial obligations with regard to those rights, the distinction between progressive and immediate realization of certain of those rights, and ways to ensure accountability.

36. Some participants also raised concerns over not including migrants under the definition of "peasant". They highlighted the need for special protection measures, especially in relation to migrant women, as they faced discrimination and limited access to land and other resources. They highlighted that there was often a lack of protection for migrants, including no access to health services, water and sanitation.

V. First reading of the draft United Nations declaration on the rights of peasants and other people working in rural areas

37. The Chair-Rapporteur noted that there were over 50 international conventions, covenants and instruments that had been used as the basis for the new draft declaration, including international human rights treaties and standards developed by the United Nations human rights mechanisms; regional human rights treaties; General Assembly and Human Rights Council resolutions; instruments adopted by FAO and ILO; and a number of other international treaties, outcome documents of international conferences, reports of the United Nations, as well as instruments developed by civil society, social movements, academics and experts.

38. The Chair-Rapporteur introduced articles 1-6, indicating the background of each article, and opened the floor for comments from representatives of States and civil society and other participants.

39. Many States reserved their position because of the late distribution of the draft declaration. Some stated that it was premature to present a draft at this session. Some participants raised concerns over the implementation of the declaration, highlighting that various human rights international declarations lacked implementation even after signing and ratification by the Member States. A number of participants also raised objections over the use of the term "peasants". They noted that the term was derogatory and disrespectful and asked for more discussion over it. Some participants argued that the definition under article 1 was narrow and proposed that it to be broader, while others said it was right to define "peasants" in article 1 of the declaration, but that the proposed definition was too broad. One State indicated that it would be difficult to comment on the text as it was only provided in English. That delegation noted that there was no concept of "peasants" in his

country and that the United Nations translation of "peasant" into Arabic was "farmer", which could include large-scale farmers.

40. An NGO raised its concern that Dalits, tenants and sharecroppers were not included in the definition of "peasant". It proposed that those groups be included in the definition of "peasants" within the framework of declaration.

41. Several delegates sought clarification of the phrase "access to natural resources" and its meaning and scope under the draft declaration. One delegation also raised concerns over the definition of natural resources and community right over them. Delegates also highlighted that, under article 2 of the declaration, extraterritorial obligations of States were noted, but said that more clarification was needed on the responsibilities of States and non-State actors. It was also argued that this term had been elaborated on, but specific responsibilities of international enterprises needed to be defined.

42. A number of States asked for further clarification of article 5 of the draft declaration and the concept of sovereignty. They argued that food sovereignty was a concept under discussion in international forums and not fully defined. Some NGOs also stated that food security and food sovereignty were two different concepts and should not be used interchangeably. They also argued that both terms should be defined clearly and developed sufficiently. One NGO noted that article 5 could be divided into two separate articles dealing with food security and food sovereignty independently. Another NGO noted that food sovereignty was, in its view, directly related to the right to self-determination and therefore should be central in the first articles of the draft declaration. A number of delegations noted that the language of article 5 should be grounded in human rights instruments, including the Universal Declaration of Human Rights.

43. One delegation argued that there was a need to use language relating to gender discrimination rather than gender identity because it was more universally accepted. Another delegation also sought clarification and elaboration of the terms "subsistence" and "small farm holders" and proposed the recognition of the term "justiciability" and the use of human rights principles such as discrimination, as well as the right to development, in the declaration.

44. Several NGOs, including representatives of peasants and other peoples working in rural areas, expressed their general support for articles 1-6. They welcomed the inclusive character of the definition of "peasant" and the recognition of the peasant identity. They proposed to include in the definition the specific relation of peasants with the land, the fact that peasants did not seek primarily profit and accumulation but rather their subsistence and the reproduction of their families. They insisted that they would prefer to see the notion of "peasant agriculture" used rather than "small-scale agriculture". They welcomed the inclusion of the right to food sovereignty and suggested it could be separated from the right to sovereignty over natural resources, as those were two distinct issues. They also strongly supported the inclusion of article 6 on the right of rural women, as women were the most discriminated against in rural areas.

45. The Chair-Rapporteur introduced articles 7-14, indicating the background of each article and opened the floor for comments from States, civil society and all participants.

46. An NGO asked why the word "liberty" had been used instead of "freedom", while another NGO noted that States must have effective mechanisms for the prevention of violations of the right to life. Another delegation noted that article 7 should be seen in the light of territorial unity and that the use of local customs must not be used as a justification to violate national and international law.

47. Participants highlighted that under article 9 of the draft declaration, freedom of movement of mobile peasants was not expressly defined. Some participants argued that

States should do more to promote cross-border mobility and facilitate free movement of herds, with proper safeguards. One participant proposed including collective remedy mechanisms in the declaration. Participants also highlighted the need for access to justice and justice mechanisms for women in rural areas.

48. Several NGOs, including representatives of peasants and other peoples working in rural areas, welcomed the inclusion in the new draft of those articles on civil and political rights. Those were already recognized as human rights, but they argued there was a need to include them in the declaration to give them more visibility and adapt them to the specific needs and realities of peasants. They noted that peasants and other peoples working in rural areas continued to suffer multiple violations of their civil and political rights, in particular their rights to freedom of association, freedom of thought, opinion and expression, and that they were often denied access to justice. They insisted that there were continual human rights violations against peasant leaders and that the right to life was being violated.

49. Some participants highlighted that under article 12 of the draft declaration, peasants should be given the right to participate in the formulation of government policy and programmes that affected peasants and other people working in rural areas. They argued that would enable peasants and other people working in rural areas to access information and markets easily. One participant highlighted the lack of participation in politics by peasants and other people working in rural areas and proposed that States ensure that there be at least 50 per cent participation rate for peasants in the decision-making process.

50. One participant noted that article 13 was too detailed and unrealistic and asked for detailed information in a timely fashion on the ways in which a purchaser intended to market produce purchased.

51. A number of participants raised concerns regarding article 14 and noted that the language should be more closely associated with agreed international human rights language. Some participants also noted that there was a need to introduce government policies for compensation for peasants and other people in rural areas facing human rights violations.

52. The Vice-Chair introduced articles 15-18, indicating the background of each article and opened the floor for comments from States, civil society and all participants.

53. A number of delegations raised concerns over the Chair-Rapporteur's description of the working group as holding a "favourable view" of the draft declaration, which was seen from their perspective as an inaccurate characterization of discussions. They also raised questions of the legal basis of new rights mentioned in the draft. They sought clarification regarding the procedure of work of the second session and asked the Vice-Chair to elaborate on what the outcome of the session would be. The Vice-Chair responded to those concerns by noting that the objective of the second session was to share views and information, and that there would not be a line-by-line examination of the draft text during the session. Some participants stated that they saw the current process as a first reading of the draft declaration. One delegation noted that it would like further information regarding the term "create an enabling environment" and associated State obligations in article 15. One delegation raised the point that it would need to consult labour experts on articles 15, 16 and 18 and asked if the Human Rights Council was the most appropriate forum for that discussion, rather than the International Labour Organization. One NGO noted that it supported article 15 of the declaration and recommended that migrant workers who worked in the agricultural sector be specifically highlighted, as they were often subjected to trafficking and exploitation. Another delegation noted that it was important to add references to forced and bonded labour in order to help fight against exploitation.

54. One delegation stated that a clear definition of peasants was needed so that government policies could focus on framing and implementing article 16. One delegate

argued that article 16 could be linked with other articles that refer to the right to health and inquired whether there was a need for separate articles. An NGO responded to that query by highlighting that it was appropriate to have an article on the right to safety and health at work, because peasants and other people working in rural areas worked in some of the most hazardous and dangerous work environments.

55. One delegation noted that article 17 should have more focused gender-mainstreaming language. The delegate had concerns surrounding price-setting and its impact on States' obligations. One NGO supported article 17, noting that the text should include as much as possible about nutrition and the right to a healthy diet. A number of participants asked for sources and clarification regarding the term "culturally acceptable food".

56. A number of States raised concerns regarding the language of article 18, noting that the suggested text pertaining to markets could imply that the Human Rights Council was going beyond its mandate. Another delegation also raised concerns regarding the term "community-based commercialization system" and asked for more clarification regarding the text. Two delegations highlighted their support for article 18 and noted that it was important that the article stayed in the draft declaration because it was important for peasants and other people working in rural areas to be able to sell their produce at prices that allowed for an adequate standard of living.

57. Several NGOs, including representatives of peasants and other peoples working in rural areas, stressed the importance of articles 15-18. They highlighted that those were economic, social and cultural rights already recognized but that needed to be given more visibility and applied to the specific needs and realities of peasants and other peoples working in rural areas. A number of participants stressed the importance of the right to food, as peasants and others peoples working in rural areas represented 80 per cent of those in the world that are hungry. The point was made that the key element of a right to food for peasants must be the right to produce food, and that aspect should be reinforced in the drafting of the article. Several participants also welcomed the inclusion of the right to a decent income in the declaration. They stressed that one major obstacle for peasants to have a decent income was the fact that peasants were not able to sell their production at a fair price. They proposed therefore the inclusion of some State obligations related to the need to regulate food markets in order to ensure a fair price for peasant products and also abuse of power by intermediaries, the dumping of agricultural products and the monopolies of transnational corporations be prohibited. They also stressed the necessity of including provisions on the need for States to support access to local markets for peasant production and stop applying to peasant products the same standards and regulations that they applied to industrial agricultural producers. Some participants also highlighted the issue of public subsidies and aids and proposed including the obligation of States to give priority to peasants for the attribution thereof. The problem of decent income for agricultural workers and the lack of implementation of existing instruments, including ILO instruments, was also highlighted by several participants and the point was made that the language of the article should be strengthened in that regard.

58. The Vice-Chair introduced articles 19-23, indicating the background of each article and opened the floor for comments from States, civil society and all participants.

59. A number of delegations noted that article 19 should be discussed in other United Nations forums and that many points in that particular article needed clarification. One delegation sought clarification on the sources for article 19. Other delegations noted that it was important to recognize those rights, building upon already agreed international standards, such as those existing on the responsible governance of land, fisheries and forests. A number of NGOs argued that, although the right to land was considered a "new" right, it was already established in other international instruments such as in the Declaration

on Social Progress and Development and that the right to land needed to be kept in the declaration, because peasants and other people working in rural areas had a specific cultural relationship with their land and territories. They also noted that business enterprises were able to claim their rights to land and private property, which was denied to peasants and other people working in rural areas.

60. One delegation raised concerns regarding article 20 and noted that they would like further clarification regarding the term "transboundary environmental harm" and how that impacted State obligations.

61. A number of delegations raised concerns regarding article 22 noting that it was a "new" right, and that it should be dealt with in a different United Nations setting. They noted that the proposed right was not in line with many national policies and trade agreements. It was also recommended by some delegations that the issue of seed rights should be taken up in the World Intellectual Property Organization rather than the Human Rights Council. Other delegations noted that it was important to include that right in the declaration, even if the wording could be adapted to take other international instruments into account. A number of NGOs argued that article 22 was key to the draft declaration because peasants and other people working in rural areas were subjected to pressure from business enterprises to use genetically modified seeds rather than seeds that they had traditionally used. They also noted that patent laws were being used to compel peasants and small-scale farmers to use seeds of specific companies.

62. A number of delegations noted that article 23 was considered to be a "new" right and therefore they would need to consult with their Governments. It was also argued that the right to biological diversity was not an issue for the Human Rights Council. Other delegations noted that the right was important for peasants and other people working in rural areas.

63. A number of NGOs, including representatives of peasants and other peoples working in rural areas, welcomed the new draft of articles 19-23, and stressed that those articles were probably the most important in the whole declaration. They highlighted in particular the right to land and the right to seeds as crucial for peasants and other peoples working in rural areas. They stressed that many elements in those articles were in fact not new but taken from other existing international instruments. On the right to land, several of those participants identified access to land and security of tenure as the key elements that should be recognized. They welcomed the effort to use agreed language but highlighted some important elements that had been lost in the process and that should be reintroduced, emphasizing in particular the agrarian reform, which, they argued, was recognized to a certain degree in a number of United Nations human rights conventions, but also the social function of land, the prohibition of latifundia and the obligation of States to act against the concentration of the ownership of land. One NGO suggested including specific extraterritorial obligations, as well as the obligation to regulate non-State actors.

64. The Vice-Chair introduced articles 24-30, indicating the background of each article and then opened the floor for comments from States, civil society and all participants.

65. A number of delegations noted their concerns regarding article 24 and asked for more clarification with regards to the terms "customary water management system", "cultural use of water" and "use of water not only for personal use". One delegation noted that the language used in article 24 could be considered discriminatory as it only referred to disadvantaged groups. Further clarification was requested as to the term "water poisoning". Other delegations noted that the inclusion of that right in the declaration was important. One delegation also stated the view that, while it supported the right to water and sanitation, it was important for the language used to match national legislation. A number of NGOs noted that it was important to take into account the special need of peasants, including for

water for irrigation. They argued that the management of water should have local leadership, as peasants and small stakeholders understood the effect of the misuse of water. They also noted that peasants and other people working in rural areas wanted a fair and sustainable solution, considering the old systems for distributing water to be unfair and outdated.

66. Two NGOs noted that not only people who dwelt in urban areas had the right to social security; specific measures should be put into place to ensure that women, older persons and individuals affected by climate change were also protected. Some delegations supported the inclusion of the right to social security as that right was essential for peasants and other people working in rural areas. One delegation noted that different countries had different domestic laws, and that there was no universally recognized system for social security.

67. One delegation noted that the right to health was already recognized and that right, along with others, in the declaration were already well defined. A number of NGOs highlighted the need to include article 26 because of the need to keep references to the harmful effects of chemicals and other pesticides. They furthermore highlighted the negative effects of chemicals on peasants and other people working in rural areas, particularly with regard to women's reproductive rights.

68. A proposal was made to include the specific obligation of States to take measures to limit the use of chemicals in agriculture. The importance of article 25 on social security was also emphasized and its inclusion in the new draft was welcomed. Proposals were made to include the obligation of States to implement insurance against environmental and climatic events for peasants.

69. One delegation asked how article 30 of the draft declaration would be implemented.

70. At the end of the meeting, the Vice-Chair clarified the term "water poisoning", explaining it meant "slow poisoning" and provided the example of fish living in waters polluted by mercury, who consumed the mercury and then transferred it to humans.

71. The Vice-Chair introduced the preamble, indicating its background and sources, then opened the floor for comments from States, civil society and all participants.

72. A number of delegations noted that they felt the declaration gave special rights to people in certain groups and that this might negatively affect other groups of people. They also noted that they wanted to avoid ambiguities and said that more clarification was needed regarding the term "harmonious practices with Mother Earth". They also highlighted that each country had its own practices, and that the term did not have the same definition everywhere. They also noted that FAO, ILO and the World Intellectual Property Organization should have been consulted in the drafting process and that they were the adequate forums to discuss those topics, rather than the Human Rights Council. Another delegation noted that it would be better to analyse the existing declarations and conventions to address the various issues related to peasants and other people working in rural areas. Some delegations discussed on the extraterritorial scope of the declaration, highlighting that threats to peasants and other people working in rural areas often originated from outside the national territory.

73. A number of delegations thanked the Chair-Rapporteur and the Vice-Chair for the transparent way in which the working group had been conducted and noted that they were particularly satisfied with the mainstreaming of a gender perspective. One delegation also highlighted the need to focus more on children and people with disabilities.

74. One delegation noted they would prefer the term "food security" rather than "food sovereignty" because it was more widely accepted, and that they would prefer wording that was in line with language found in existing instruments of international human rights law.

75. One delegation noted that the preamble highlighted a number of international human rights treaties and instruments and that articles 22 (1) and 23 (1) should also be included in the preamble, as they did not generate any specific obligations. It also recommended that a reference be included to the International Conference on Agrarian Reform and Rural Development.

76. A number of States noted that, although they needed more time to further study and analyse the declaration, they were convinced that it was highly necessary to guarantee the rights of peasants and other people working in rural areas and to encourage the international community to support the declaration. One delegation also noted that articles 24-30 were essential to ensuring and protecting economic, social and cultural rights.

77. Another delegation noted that promoting and defending peasants and other people working in rural areas was essential and that the declaration would strengthen national and international initiatives to combat hunger and food crises and support the preservation of biodiversity. They also noted that clear instruments for economic and social inclusion of all those living in rural areas and fishing communities were needed and that the aim of the declaration was to ensure access to markets, credit and sophisticated irrigation mechanisms in order to reduce poverty. They also noted that guaranteeing social security and protection was still a major challenge, and that rural women had a key role to play.

78. One delegation argued that the declaration could contribute to improving the potential growth of peasants and other people working in rural areas by improving their welfare. It also noted that it supported the concept of food sovereignty, because it emphasized the need for fair trade, particularly for small producers. It furthermore noted that articles 5, 18 and 21-24 were key to the declaration because they guaranteed land, seeds, cultural knowledge, agricultural loans, ecosystems for future generations, marketing services, appropriate technologies, equal treatment in agrarian reform, and the quality of life of peasants and other people working in rural areas.

79. One NGO noted that farmers specifically in South Asia usually only referred to men and therefore requested that "peasant men and women" be added to the preamble.

80. One NGO noted that the concept of Mother Earth was not new within the United Nations system and that it was a valuable concept for peasants and other people working in rural areas, particularly in countries that recognized collective rights. They also noted that the consideration by the Human Rights Council of those rights from a human rights perspective emphasized their importance and the obligations of States to comply therewith.

81. Some NGOs highlighted the need for the text to be easy to understand for peasants and other people working in rural areas to read. They furthermore noted the need to acknowledge that it was important to remember the importance of peasants' food production and their collaboration in maintaining the environment in the context of climate change. They also noted the importance of land, seeds and water as rights and highlighted that peasants and other people working in rural areas had a special relationship with nature. They argued that contributed to the preservation of biodiversity and that without food sovereignty it was almost impossible to guarantee any other human right. Welcoming the term "food sovereignty", they noted that food security and food sovereignty were not the same thing and could not be used interchangeably.

82. A number of NGOs noted the discrimination that peasants faced and emphasized that they were the most vulnerable in accessing justice, particularly in the context of land reform and land grabs.

83. A number of NGOs underscored the importance for peasants and other people working in rural areas to have access to seeds and information especially on genetically modified organisms. One NGO also noted that when addressing development it was

important to clarify the distinction between drug trafficking and illicit crops, as some peasants had been arrested for drug trafficking for growing certain plants.

84. The Vice-Chair informed participants that they were able to submit comments in written form and closed the meeting, as there were no further requests.

85. The Chair-Rapporteur opened the final meeting to States, civil society and all participants of the working group for comments on the proposed language of the conclusion and the recommendations.

86. One delegation suggested changing the word "negotiations" to "discussions" as, it argued the word "negotiations" suggested that a formal dialogue had taken place during the second session of the working group. That position was supported by a number of delegations, who highlighted that they were not entering into negotiations because they had not been given a formal mandate by their Governments. They furthermore noted that the text of the draft declaration had not been translated into all official United Nations languages and had been distributed late. The delegations suggested including a change to the text in paragraph 91 (a) to include the word "continue". Those positions were also held by other delegations.

87. A number of delegations noted that they disagreed with the other delegations and that negotiations had indeed taken place throughout the week because the very nature of holding a working group was to negotiate, and that the word "negotiation" was specifically mentioned in the various resolutions that set out the mandate of the working group. One delegation noted that, although the word "negotiation" was open to interpretation, they understood that any informal consultation held in the United Nations was by default a type of negotiation. One participant noted that they agreed that the word "negotiations" should remain and that they supported the delegations' arguments.

88. The Chair-Rapporteur thanked all the participants and suggested taking out the word "negotiation" from where it was first mentioned in section 91 (b) but leaving the word in paragraph 91 (a), and the remaining text, while including the suggested word "continue".

89. Hearing no objections from the floor, the text was adopted and the Chair-Rapporteur informed the participants that they could send any suggested changes to the secretariat by 20 February 2015. The Chair-Rapporteur also thanked the participants for their participation in the working group and closed the session.

VI. Conclusions

90. At the final meeting of its second session, the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas welcomed the participation of the Chief of the Development and Economic and Social Issues Branch from OHCHR, as well as a number of independent experts who took part in the panel discussions, acknowledged the constructive dialogue that took place between Governments, regional and political groups, civil society, non-governmental organizations and all other relevant stakeholders and took note of the inputs received from them.

VII. Recommendations of the Chair-Rapporteur

91. **Following the second session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas, the Chair-Rapporteur recommended to the Human Rights Council that:**

(a) A third session of the working group be held to continue negotiating on the basis of the draft declaration presented by the Chair-Rapporteur at the second session of the working group, while taking into consideration the report of the Chair-Rapporteur on the second session, as well as informal consultations to be held in the intersessional period;

(b) Informal consultations with Governments, regional groups, intergovernmental organizations, United Nations mechanisms, civil society and representatives of peasants and other people working in rural areas, as well as other relevant stakeholders, be held by the Chair-Rapporteur in the intersessional period;

(c) The Chair-Rapporteur, with the support of OHCHR, intensify its efforts towards further engagement and active participation of all relevant stakeholders, in particular intergovernmental organizations, United Nations mechanisms, civil society and representatives of peasants and other people working in rural areas, in the work of the working group.

VIII. Adoption of the report

92. At its ninth meeting, on 6 February 2015, the working group adopted the draft report on its second session and decided to entrust the Chair-Rapporteur with its finalization.

Annex I

Agenda

1. Opening of the meeting.
2. Election of the Chair-Rapporteur.
3. Adoption of the agenda and organization of work.
4. Programme of work.
5. Panel discussion.
6. General statements, followed by the first reading of the draft declaration.
7. Adoption of the report.

Annex II

List of speakers for panel discussions

Panel discussion I. Civil, political, economic, social and cultural rights of peasants and other people working in rural areas and gaps

Christophe Golay, Geneva Academy of International Humanitarian Law and Human Rights

Jose Francisco Cali Tzay, Chair of the Committee on the Elimination of Racial Discrimination

Joanna Bourke-Martignooi, University of Fribourg

Genevieve Savigny, La Via Campesina

Panel discussion II. Rights of peasants and other people working in rural areas in other international instruments and gaps

Sofia Monsalve, Food First Information and Action Network International

Sue Longley, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations

Adriana Bessa, Geneva Academy of International Humanitarian Law and Human Rights

Henry Saragih, La Via Campesina

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Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its fifteenth and sixteenth sessions*

(Geneva, 31 March–4 April 2015)

Chair-Rapporteur: Mireille Fanon Mendès-France

Summary

The present report mainly focuses on deliberations of the sixteenth session of the Working Group on the theme of "Development and people of African descent". The Working Group engaged in internal discussions during its fifteenth session. At its sixteenth session, it acknowledged the linkages between underdevelopment and racism, racial discrimination, xenophobia and related intolerance faced by people of African descent. The Working Group urged States to establish programmes based on the participation of people of African descent aimed at improving their economic and social conditions. It also reiterated its recommendation to devote special attention to the needs of people of African descent through, inter alia, the preparation of specific programmes of action for the implementation of the programme of activities for the International Decade for People of African Descent.

* Annex II of the present report is reproduced as received, in the language of submission only.

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I. Introduction

1. The Working Group of Experts on People of African Descent held its fifteenth session from 17 to 21 November 2014 and its sixteenth session from 30 March to 2 April 2015 at the United Nations Office at Geneva. The fifteenth session was attended by the Chair of the Working Group, Mireille Fanon Mendès-France, Verene Shepherd and Sabelo Gumedze (appointed on 27 June 2014), as the formal appointment of two new members (Michal Balcerzak and Ricardo A. Sunga III) was still pending at the time. The sixteenth session was attended by all members of the Working Group, including the two new members. The present report is submitted in accordance with Human Rights Council resolutions 9/14, 18/28 and 27/25, in which the Working Group was requested to submit an annual report to the Council on all activities relating to its mandate.

2. Representatives of Member States, the Holy See, international organizations, regional organizations, non-governmental organizations (NGOs) and invited panellists participated in the session of the Working Group (see annex II).

II. Organization of the sixteenth session

A. Opening of the session

3. Ms. Fanon Mendès-France opened the session and welcomed all participants. In particular she welcomed the three new members of the Working Group, Mr. Gumedze, Mr. Balcerzak and Mr. Sunga.

4. The Chief of the Anti-Racial Discrimination Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Yury Boychenko, delivered the opening statement of the session, and informed the meeting that the High Commissioner would deliver his statement to the session on 1 April 2015. In his opening statement, Mr. Boychenko highlighted the important role of the Working Group in bringing focus to the multiple challenges faced by people of African descent in the enjoyment of the right to development, and in submitting important recommendations for States Members of the United Nations and civil society at large on ways to address the protection of their human rights.

B. Election of the Chair-Rapporteur

5. Ms. Fanon Mendès-France was re-elected Chair-Rapporteur of the Working Group. The Chair thanked the other members of the Working Group and the participants for their support and added that the Working Group would continue to strive to strengthen the mandate that had been entrusted to it.

C. Organization of work

6. The Working Group adopted the agenda (see annex I) and programme of work.

III. Update and briefings on activities undertaken by the Working Group in the past year

7. Under item 5 of the agenda, Ms. Fanon Mendès-France informed participants that on 3 November 2014 she had attended a meeting of the Third Committee of the General Assembly in New York and presented the activities of the Working Group, including an overview of discussions and conclusions from its annual meetings, findings from country fact-finding visits, action taken under the communication procedure and work relating to the International Decade for People of African Descent. An interactive dialogue at the end of her presentation had received broad support from members of the Committee for the work of the Working Group.

8. Ms. Fanon Mendès-France also briefed the participants of the sixteenth session on the fifteenth session of the Working Group, which was an internal meeting at which members had reviewed the Working Group's methods of work, prepared its upcoming session, communications and country visits and held meetings with various stakeholders and OHCHR units. The Working Group had agreed that it was important to identify its role in relation to the International Decade for People of African Descent and to communicate with the High Commissioner to seek clarity on the issue, including its participation in the Forum for People of African Descent. It had also decided to undertake follow-up visits five years after its previous visit to a country. It further decided to undertake a thematic study on racial stereotyping. Finally it decided to explore ways to increase collaboration with the Committee on the Elimination of Racial Discrimination.

9. The Chair-Rapporteur briefed participants on the country visits of the Working Group to the Netherlands (26 June–4 July 2014) and Sweden (1–5 December 2014). At the end of the visits, the Working Group had released press statements, which were available on the OHCHR website.[1] The Chair thanked the Governments of the Netherlands and Sweden for their invitation and assistance before, during and after the visits. The Chair also thanked the representatives of NGOs and the people of African descent with whom the Working Group had met during the visits and informed participants that reports of the missions would be submitted to the Human Rights Council at its thirtieth session and made publicly available on the website.

10. Ms. Shepherd informed participants that, on behalf of the Working Group, she had presented two reports to the Human Rights Council during its twenty-seventh session: the report on the country visit to Brazil from 4 to 14 December 2013, and the report on the fourteenth session of the Working Group. She mentioned that the report on the fourteenth session of the Working Group had generated much discussion in relation to access to justice for people of African descent. At the invitation of the President of the General Assembly, Ms. Shepherd had delivered the keynote address on the occasion of the commemoration of the International Day for the Elimination of Racial Discrimination at the United Nations in New York on 20 March 2015. The theme for the commemorative event was "Learning from historical tragedies to combat racial discrimination today". On the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade on 25 March 2015, Ms. Shepherd had participated in the unveiling of the memorial entitled the "Ark of Return" at the United Nations in New York.

11. The Chair had participated in the sixth session of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International

[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14840&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15388&LangID=E.

Convention on the Elimination of All Forms of Racial Discrimination on 8 October 2014. In addition to those activities Ms. Fanon Mendès-France and Ms. Shepherd had participated in the official launch of the International Decade for People of African Descent (2015–2024) at the General Assembly on 10 December 2014.

IV. Summary of deliberations

Thematic analysis: development and people of African descent

12. The Working Group devoted its sixteenth session to the third pillar of the theme of the International Decade for People of African Descent, development.

13. Lawrence Juma, Professor and Deputy Dean, Faculty of Law, Rhodes University, South Africa, delivered the keynote presentation on the topic "Right to development and people of African descent: prospects and challenges". He began by stating that the International Decade for People of African Descent presented an opportunity to take stock of efforts that had been made up till then in the uplifting of the conditions of people of African descent and to make recommendations for the future. Mr. Juma delved into the nature of the right to development, asserting that the contentious nature of that right, owing to unresolved implementation challenges, should not obscure the overall benefits of it. Mr. Juma then outlined what development and the right to development should mean for people of African descent, drawing on experiences from Africa, the Americas and Europe. He proposed that the implementation of the right to development and a rights-based approach might provide some avenue for redressing the development needs of marginalized communities. He concluded by identifying areas that would maximize the benefits of a rights-based approach to development, such as increasing participation, normative interventions, the use of special measures and international collaboration.

14. An interactive discussion followed the presentation in which members of the Working Group and participants in the session engaged with Mr. Juma, who responded to questions and comments by further expanding on issues such as the justiciability of the right to development, providing further avenues for participatory processes in realizing the right to development and awareness-raising. The Permanent Representative of Brazil thanked the Working Group and the keynote speaker for the presentation, and stated that genuine equality in development was fundamental for the eradication of racism. She added that the International Decade for People of African Descent provided an important opportunity to raise more awareness of the rights of people of African descent.

15. The first panel discussion of the session centred on the legal framework, the right to development and people of African descent. Shyami Puvimanasinghe, Human Rights Officer, Right to Development Section of OHCHR, presented a historical overview of the concept of the right to development and the international legal framework with a focus on the Declaration on the Right to Development. She also presented the new development paradigm based on the sustainable development agenda and its goals, the climate summit and development, and financing for development. She emphasized the need for international solidarity to realize the right to development for all people.

16. Ms. Fanon Mendès-France made a presentation, entitled "Law and development". Drawing from examples from around the world, she described the challenges in the realization of the right to development by people of African descent, including the denial of the right to human dignity. Despite the developments observed in standard-setting throughout the past decades, people of African descent continued to be discriminated against, inter alia, in various social sectors and in the criminal justice sector. Development

must be applied to uplift millions of African descendants and Africans, who had been perceived only through the devaluing prism of race and racial discrimination.

17. Patrice Tacita, a lawyer and poet belonging to the group Liyannaj Kont Pwofitasyon from Guadeloupe, lectured on "History, justice and development: the Kalinas's land case". He provided an overview of the case, which entailed the appropriation of land in Daubin, in the municipality of Sainte-Rose in Guadeloupe, by descendants of slave owners. Mr. Tacita informed the session that the Kalina people, who were people of African descent, had been dispossessed of their ancestral lands during the enslavement and since that time had been unable to reclaim their land owing to lack of recognition of the Kalina people as a distinct group of African descent with their own culture and tradition, as well as to discrimination in the administration of justice. He suggested that a legal approach to addressing the land issue in Guadeloupe was the way to restore what had been destroyed by enslavement followed by colonialism. He expressed hope that the Working Group would consider the case of the Kalina people in their struggle for the return of their dispossessed land.

18. The Director of the Regional Centre for Latin America and the Caribbean of the United Nations Development Programme (UNDP), Rebeca Arias, made a statement on video on "The state of development of people of African descent in Latin America and the Caribbean region". She stated that people of African descent in the region reflected a higher incidence of poverty, unemployment, low levels of schooling and worse health and housing problems along with the racial discrimination and lack of representation and participation faced by people of African descent. UNDP focused on prioritizing efforts to eliminate poverty and overcome inequality and exclusion in the region. The lack of participation of women of African descent in decision-making positions was a key challenge in addressing inequality in the region. Ms. Arias recommended promoting affirmative action policies and international cooperation as important ways to promote and protect the rights of people of African descent in the region.

19. During the interactive discussion a number of participants asked the panellists questions relating to the implementation of the right to development and sought more information on the Kalina people from Mr. Tacita.

20. The second panel discussion focused on the specific needs and experiences of people of African descent in the areas of education, housing, health and employment. Mr. Balcerzak, member of the Working Group, presented the topic, "Towards more effective implementation of economic, social and cultural rights of people of African descent: challenges and perspectives". He laid emphasis on the areas of education, employment, health and housing in the programme of activities of the International Decade for People of African Descent and suggested the inclusion of cultural rights as part and parcel of a human rights approach to development. He also emphasized fostering recognition of human rights among societies through education. There was an important need for more engagement with the Committee on Economic, Social and Cultural Rights. Mr. Balcerzak highlighted the importance of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which introduced the individual complaint mechanism in relation to the rights enshrined in the Covenant. He expressed hope that in the framework of the Decade the Working Group would have an opportunity to encourage regional organizations to take more interest in the economic and social rights of people of African descent.

21. Rebekah Thomas of the World Health Organization delivered a statement on the topic, "Ethnicity and health: Afro-descendant population in the region of the Americas". Ms. Thomas pointed out that communicable diseases, such as HIV/AIDS, sexually transmitted infections or tuberculosis, continued to be an important cause of morbidity and mortality among people of African descent in the Americas, chronic degenerative diseases, such as cardiovascular disease and cancers, were on the rise — together with urban health problems (external causes such as violence, suicides and accidents; alcoholism and drug

dependency; pollution, deterioration and destruction of the environment). Women of African descent found that their situation had worsened because of discrimination and that they suffered by virtue of their ethnicity. Ms. Thomas further highlighted ongoing strategies aimed at reducing health inequities, including through targeted work at the inter-agency and country level, by focusing on tuberculosis, other communicable diseases and mental health, as well as on various awareness-raising activities.

22. Lisa Wong of the International Labour Organization (ILO) presented a paper on the topic "People of African descent and the labour market: limited progress". She stated that the elimination of discrimination in employment occupation and the promotion of equality of opportunities had been at the core of the work of ILO. However, discrimination based on race continued to affect millions of workers worldwide. She pointed out the multiple forms of discrimination faced by women of African descent, such as the combined effects of the economic crisis, renewed debates about multiculturalism in society, plus the resurgence of intolerance and xenophobic sentiment in many parts of the world. Wage discrimination and racial stereotypes in workplaces, limited access to formal education and vocational training were mentioned as some of the major challenges Enactment and enforcement of legislation prohibiting and preventing discrimination at work, promotion of equal opportunities at work, education, training and awareness, were some of the important means of tackling the challenge, in which ILO was actively engaged. She also provided a number of examples from various countries in that regard.

23. Mr. Gumedze, member of the Working Group, delivered a presentation on the topic "The effects of racial discrimination on development in Africa". Mr. Gumedze asserted that racial discrimination negated development and impeded the enjoyment of the right to development in Africa. He stated that the legacy of apartheid in South Africa, racial discrimination in Madagascar and Tunisia, the genocide in Rwanda as a result of discrimination on grounds of ethnicity, modern slavery in Mauritania and the Sudan and the prevalence of discrimination against people with albinism in Africa provided several indicative examples of racial discrimination in Africa. He recommended that the Working Group focus on those issues, which adversely affected the development of the continent.

24. During the interactive debate following the panel discussion, a number of participants commented and asked the panellists questions on the respective presentations. Ms. Fanon Mendès-France asked the presenters about the barriers to quality education. Ms. Shepherd commented that it was essential that development should not only be looked at from an economic perspective, its linkages to culture were equally important. Mr. Guzmedze commented on the importance of cultural education, while Mr. Sunga requested further information on culturally appropriate health services. In response, Mr. Balcerzak pointed out that it was essential to look into education systems that promoted scholarships and included issues relating to the history and culture of people of African descent, as ways to address barriers to education. Ms. Thomas responded that the participation of people of African descent and the principle of accessible, affordable and acceptable health services were important elements in ensuring culturally appropriate health services. The representative of Uruguay requested further information on the impact of quotas, to which Ms. Wong responded that there was very little information available on the evaluation of the impact of the different quotas that had been put in place at the national level.

25. The third panel of the session focused on the International Decade for People of African Descent. The Chair of the Ad Hoc Committee on the Elaboration of Complementary Standards and Ambassador of South Africa, Abdul Samad Minty, delivered his statement. He stated that most people of African descent continued to live in conditions of extreme poverty exacerbated by the current economic and financial crises, which were cascading effects of the slave trade, the transatlantic slave trade, enslavement

and colonialism. He said that, despite all existing mechanisms, racism continued to rise; more aggressive manifestations of racism currently needed stronger measures and, in that connection, he gave a few examples of the prevalence of racism in sports, in the statements of politicians, in the treatment of migrants and in the media, among other areas. The Decade provided an important opportunity to focus genuinely on the plight of victims and on unconditional respect for human dignity. The Ad Hoc Committee would appreciate receiving meaningful contributions on those issues from the Working Group.

26. Jacques Martial, actor and president of the Établissement public du parc et de la grande halle de la Villette in Paris, delivered his presentation on "The *dialogue de citadelles* project, culture and its linkages to the International Decade". He said that the International Decade for People of African Descent provided an important framework for stressing the historical, geographical and multicultural aspects of people of African descent as exemplified by the *dialogue de citadelles* project. The project was aimed at highlighting the shared history of slavery and colonialism of the Caribbean as well as the contribution of people of African descent in the Caribbean to world culture. In particular, the project disseminated art and creation of the Caribbean through exhibitions, cultural events, performance arts and intercultural dialogue, with a view not only to raise awareness about the richness of the culture and history of the region, but also to allow different countries in the region to share their experiences among themselves.

27. Ms. Shepherd delivered a presentation on "Reparation and the right to development". She established the linkages between justice and development by drawing upon the salient observations and recommendations of the Durban Declaration and Programme of Action and the programme of activities of the International Decade for People of African Descent. She referred to the need for States to repair the damage done by the transatlantic trade in captured Africans, enslavement and colonialism. She also referred to the destruction of African communities, the capture and forced relocation of Africans to the Americas, the African Maafa, inhumane treatment during enslavement, post-slavery racial apartheid and suppression of anti-colonial struggles, as violations committed against people of African descent. She further emphasized the fact that poverty was a consequence of colonialism and had always been tied to its discriminatory practices and legacies. Ms. Shepherd introduced the Caribbean Community's Ten Point Action Plan for reparatory justice and elaborated in particular on the relevance of technology transfer which would serve to address historical tragedies and development. She pointed out that it was important to engage in psychological rehabilitation and reclaim dignity and pride through "concerted efforts of racial affirmation", as espoused by the poet Aimé Césaire.

28. Following the presentations, representatives of Brazil, Colombia, Mexico, Tunisia and the Bolivarian Republic of Venezuela and several NGO representatives spoke about their respective plans and programmes in implementing the International Decade for People of African Descent at the national level and at the local level, respectively.

29. The United Nations High Commissioner for Human Rights delivered his statement to the session on 1 April 2015. He said that he was honoured that the General Assembly had appointed him as Coordinator of the International Decade for People of African Descent. In that context, he underlined that the conclusions and recommendations resulting from the session on the theme of "Development and people of African descent" would be valuable inputs for the implementation of the programme of activities for the Decade.

30. The High Commissioner pointed out that, despite economic growth, an intolerable number of people of African descent continued to be burdened by underdevelopment. People of African descent faced discrimination in their access to fundamental services, including education, health care and basic resources. Even systems for law enforcement and justice — the very systems that should ensure fairness and protect all individuals — were often skewed against people of African descent, who were massively and unfairly

overrepresented in prisons around the globe. More recently, there had been growing and vicious manifestations of racism, Afrophobia and xenophobia in many countries.

31. The High Commissioner also noted the importance of recommendations emanating from the Working Group, which had frequently highlighted many severe developmental challenges faced by people of African descent, including the prevalence of multiple, aggravated or intersecting forms of discrimination, adding to the burden of racial prejudice discrimination on other grounds, such as sex, language, religion, political or other opinion, social origin, property, birth, disability or other status. He noted with appreciation the Working Group's joining hands with the Committee on the Elimination of Racial Discrimination to discuss the fight against racial discrimination faced by people of African descent on the occasion of the fiftieth anniversary of the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination. The High Commissioner expressed the deep commitment of his Office in supporting efforts that helped to end racial discrimination against people of African descent and in realizing the rights of people of African descent.

32. Following the statement of the High Commissioner, the fourth panel of the session was held to commemorate the fiftieth anniversary of the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination. The first speaker on the panel, Pastor Murillo Martínez, member of the Committee on the Elimination of Racial Discrimination and focal point on people of African descent, discussed the prevalence of a number of myths about cultural freedom and development. Those myths had been used to justify the false dichotomy of development or diversity, which had allowed the construction of an economic enterprise the size of the transatlantic slave trade and slavery in the Americas, which he claimed was still alive in many societies and had tangible consequences with regard to racism and racial discrimination, and limited development opportunities for social groups such as those of African descent. The Committee had exerted itself as a catalyst for preventing current and potential tensions, by periodically enabling a kind of intercultural dialogue within countries through its examination of Member States and their adherence to the Convention. He also delved into the application of general recommendation No. 34 (2011) on racial discrimination against people of African descent and the multifarious development challenges faced by people of African descent globally, which required global solutions.

33. Glenn Payot from Minority Rights Group International presented the work of the Group, an international NGO working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples in different parts of the world. He gave examples of its work in relation to Dominicans of Haitian descent in the Dominican Republic, who faced risks of statelessness; issues of violence and discrimination against black communities in Eastern Europe and people of African descent in India; awareness-raising programmes undertaken by Nubian groups in Egypt; and efforts to document the situation of black communities in Iraq and Yemen. He highlighted the importance of the Committee on the Elimination of Racial Discrimination in the Group's work in the above-mentioned countries, and added that the Committee offered unique opportunities to address specific issues in great detail with relevant recommendations and to engage in discussions with a State on the details of its legislation, its policies and practices. The mandate of the Committee allowed it to focus on the most vulnerable segments of society, even when they were small in number. In the context of development and people of African descent, key challenges that remained were the lack of recognition, including the lack of data and statistics, the systemic and structural nature of underdevelopment and the need for collective action by rights holders to claim their rights.

34. Mr. Sunga, member of the Working Group, delivered a presentation on "Reflections on the African diaspora in Asia". He provided an overview of the range of obstacles to

development faced by African asylum seekers in Australia, Indonesia and Malaysia, and people of African descent in Japan. Mr. Sunga gave a number of examples as to how the rights to health, education, housing and employment in the above-mentioned countries were being compromised, or were at risk of being violated. Given the diversity of the continent of Asia, Mr. Sunga said that States in Asia, in spite of their own struggles with a colonial past and the experiences of their own nationals as asylum seekers and migrants, had shown different levels of limited understanding of the African diaspora in Asia. He emphasized the need to surface the truth about racism in that region, and recommended positive measures and awareness-raising in the different sectors to remove obstacles to the development of people of African descent, including appropriate steps to remedy violations of their rights.

35. During the interactive session, a number of representatives of Member States and NGOs participated in the discussion. In particular, Ms. Fanon Mendès-France raised the issue of increasing further collaboration with the Committee on the Elimination of Racial Discrimination. She also spoke of the situation of the Jarawa people in India, while Ms. Shepherd mentioned the situation of people of African descent in the Philippines, about which Mr. Sunga provided additional information. The respective presenters responded with further information on the issues raised.

36. The fifth and final panel discussion of the session focused on gender, African descent and development. The first speaker was Biancamaria Pomeranzi, member of the Committee on the Elimination of Discrimination against Women and focal point on development, who presented the topic of "Twenty years after Beijing: the role of the Committee on the Elimination of Discrimination against Women in assessing the impact of the Beijing Platform for Action on women of African descent". Ms. Pomeranzi said that the Beijing Platform acknowledged that gender subordination might be informed and heightened by race discrimination, xenophobia and other experiences and, because racial discrimination might exist or had intensified owing to its intersection with gender, attempts to address the persistence of racism required incorporating a gender analysis on the concept of interdependence especially within the context of anti-discrimination law, treaties and treaty bodies. She explained how general recommendations of the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women sought to call upon State parties to report on discrimination at the intersection of race and gender, offering a guide to constructive dialogue with State parties in order to eliminate specific forms of violence and discrimination faced by women of African descent, and to concretize the interdependence and intersectionality of human rights of women of African descendent.

37. The Secretary General of the Young Women's Christian Association, Nyaradzayi Gumbonzvanda, shared her personal reflections on developments since the Beijing Platform for Action. She spoke in particular about the need to carry out collective efforts in a number of different areas, such as gender equality and access to education and health services for girls and women of African descent. She emphasized the importance of strengthening linkages between Africa and the diaspora. Ms. Gumbonzvanda recommended that the Working Group further discuss issues of the rights of women of African descent, focusing on specific areas such as child marriage, among others.

38. Suzanne Charles-Watson, from the Institute for Gender and Development Studies at the University of the West Indies, delivered a video statement on the topic of "Men, masculinities and the project of development". She provided a Caribbean perspective on how issues of gender and understanding masculinities influence Caribbean development paradigms. Ms. Charles-Watson stated that, with high unemployment rates, susceptibility to the impact of climate change and migration, as well as inadequate and overburdened social protection systems, the region was currently confronted with the need to develop new paradigms of development. In that regard, she pointed out that the study of the impact of

gender systems on Caribbean societal structures was still comparatively new. She added that a study of masculinity revealed systems of gender privileging, relegation of women and girls to the private space and thus underrepresentation in the public sphere, and gender-based violence and violence against women and children. She concluded that Caribbean development paradigms must focus on equity and equality where issues of gender, masculinity and femininity ultimately became issues of human rights and human dignity.

39. The Chief of the OHCHR Women's Rights and Gender Section, Veronica Birga, presented a paper on the achievements in realizing the rights of women of African descent since the adoption of the Beijing Platform for Action 20 years previously. Ms. Birga established linkages between the emphasis placed by the Beijing Platform for Action and the Durban Declaration and Programme of Action. Both highlighted the detrimental impact of intersecting forms of discrimination on the enjoyment of human rights, particularly on women from ethnic minorities, including women of African descent. She also alluded to the wide variety of challenges faced by women of African descent in different parts of the world as identified by the Committee on the Elimination of Discrimination against Women and a number of special procedures mandate holders, such as lack of access to social services, high rates of maternal mortality, unequal access to education, violence targeting women of African descent, especially their vulnerability to being trafficked, unequal opportunities for participating in decision-making and public life, occupational segregation and disproportionate incarceration rates of Afro-descendant women. Ms. Birga further presented a short video focusing on the work of a doctor in the United States of America who was defending the health rights of African-American women. She suggested that disaggregated data, temporary special measures and access to justice were measures to address the violations of the rights of women of African descent. Representatives of Brazil, Panama and South Africa expressed their appreciation of the different presentations made by the panellists and a number of NGOs requested follow-up information from the presenters.

40. On 30 March 2015, to celebrate the launch of the International Decade for People of African Descent, the Working Group had organized a special cultural event, along with an exhibition, entitled "People of African descent: recognition, justice and development", displaying the work of the Brazilian artist, Inêz Oludé. The event was attended by representatives of a number of permanent missions to the United Nations in Geneva, staff members of the United Nations and civil society.

V. Conclusions and recommendations

41. **The Working Group concluded its sixteenth session on the theme of "Development and people of African descent" and made the following conclusions and recommendations.**

42. **The Working Group recorded its appreciation to the High Commissioner for his intervention at the sixteenth session. It also thanked Member States and civil society for their active participation.**

A. Conclusions

43. **The Working Group concludes that poverty is both a cause and a consequence of discrimination. Development should not be narrowly defined as economic development only, but must also include political, economic, social, cultural and environmental aspects, consistent with the Declaration on the Right to Development. The Working Group "recognizes that ... historical injustices have undeniably**

contributed to the poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity that affect many people in different parts of the world, in particular in developing countries" and "recognizes the need to develop programmes for the social and economic development of these societies and the Diaspora, within the framework of a new partnership based on the spirit of solidarity and mutual respect" (Durban Programme of Action, para. 158), in areas such as debt relief, poverty eradication, market access and the promotion of foreign direct investment.

44. The Working Group points out that, despite the publication of evidence, there is still insufficient attention paid to the proven contributions of people of African descent to world development. It concludes that the role that people of African descent have played in global development must be recognized both in terms of the contribution that the African continent has historically made to worldwide development, including during the transatlantic slave trade, and the contributions that Africans and the African diaspora have made and continue to make to the contemporary world.

45. In a period of economic and financial crisis, principles of participation, equality and non-discrimination should be integrated into all development activities where the realization of rights, including with respect to the fight against poverty and access to education, health, employment and political participation, are the goals of development. The Working Group also stresses that repairing the catastrophic damage done by enslavement and the slave trade would contribute to development.

46. The International Decade for People of African Descent is an important milestone in the struggle for the protection and promotion of the rights of people of African descent and their political, economic social and cultural development. On the occasion of the fiftieth anniversary of the International Convention on the Elimination of All Forms of Racial Discrimination, the Working Group recognizes the important role that the Convention and the Committee have played in protecting the rights of people of African descent.

47. People of African descent remain invisible within societies in some States, owing to, inter alia, the lack of statistical data, including data disaggregated along ethnic lines. This poses an obstacle to assessing the progress made, as well as challenges faced by people of African descent in attaining overall development.

48. Considering the conditions of extreme poverty in which the majority of people of African descent live in both developing and developed countries, development activities and programmes must address all people of African descent, regardless of the country in which they live. Racism, racial discrimination, xenophobia and related intolerance pose major obstacles for people of African descent in the eradication of poverty.

49. The Working Group is concerned by the pervasive and distinct form of racism faced by people of African descent in employment and the labour market. Most statistical data from different parts of the world point to people of African descent and Africans as being among the most unemployed, and often subjected to racial discrimination while seeking employment. Similarly, people of African descent often lack access to quality health services and face disparities in health status as a result of racial discrimination.

50. The right to education is not enjoyed equally by all; millions of girls, boys, women and men of African descent suffer disproportionately from unequal access to quality education. Failure to ensure equal access to education robs people of their

opportunity to reach their full human potential and to contribute to the development of their own communities and society at large.

51. The segregation or ghettoization of people of African descent into low standards of housing and the lack of measures to support the development and improvement of poor housing conditions faced by people of African descent is a matter of grave concern to the Working Group.

52. The Working Group recognizes that women and girls of African descent face multiple, aggravated or intersecting forms of discrimination based on sex, language, religion, political or other opinion, social origin, property, birth, disability or other status. Such discrimination manifests itself in high rates of illiteracy, unemployment, lack of access to health services, quality education, landownership, drinking water and sanitation, and gender-based violence.

53. Judicial and administrative enforcement of human rights and the justiciability of economic, social and cultural rights, including the right to development, is crucial in ensuring that the rights to health, housing, employment, education, participation in development and all other rights are enjoyed by people of African descent.

54. The Working Group recognizes the good practices in some States, including initiatives aimed at guaranteeing participation of people of African descent in decision-making, data collection and development policies addressing concerns of people of African descent.

B. Recommendations

55. The Working Group urges States to adopt measures, consistent with the Declaration on the Right to Development, aimed at guaranteeing active, free and meaningful participation of people of African descent in all political, economic, social and cultural aspects of society and in the advancement and economic development of their countries. States should promote a greater knowledge of and respect for their heritage and culture and ensure participation in development and decision-making, and in the fair distribution of benefits resulting therefrom. States should take measures to realize the right to development taking into account the need to redress historical injustices through development programmes.

56. The Working Group recommends that States take into account the linkages between enslavement and colonialism that leads to underdevelopment, and take the impact of this intersectionality into account in development policies.

57. The Working Group suggests that all agencies of the United Nations system, as well as other international development and financial institutions, monitor the situation of people of African descent and report on their status and implement the Guidance note of the Secretary-General on Racial Discrimination and Protection of Minorities.

58. The Working Group encourages all human rights mechanisms of the United Nations, regional human rights bodies, national human rights institutions and civil society organizations to devote more attention to people of African descent in the implementation of their respective mandates.

59. The Working Group encourages Governments and international development and financial institutions to establish programmes, based on the participation of the communities concerned, aimed at improving the economic and social conditions of people of African descent. It also encourages Governments in the affected regions to use regional arrangements and organizations to address the effects of

underdevelopment, which tend to have a disproportionate impact on people of African descent.

60. Civil society should be encouraged to form national, regional and international networks to share learning, experiences and good practices, raise awareness of the situation of people of African descent and carry out joint advocacy and development initiatives, and develop capacity-building programmes intended for people of African descent with a particular focus on developing leadership skills. Civil society is also encouraged to increase its cooperation with the Working Group.

61. In the context of the International Decade for People of African Descent, the Working Group urges Governments, financial and development institutions and the funds and programmes and specialized agencies of the United Nations, in accordance with their regular budgets and the procedures of their governing bodies, to assign particular priority, and allocate sufficient funding, within their areas of competence and budgets, to improving the situation of Africans and people of African descent, while devoting special attention to the needs of these populations in developing countries, inter alia through the preparation of specific programmes of action for the implementation of the programme of activities of the Decade.

62. The Working Group encourages Governments, with the assistance of specialized agencies and international development and financial institutions as appropriate, to collect and compile reliable statistical data on the political, economic and social conditions of people of African descent and to disseminate such information widely, not only in order to undertake specific development projects but also to empower all stakeholders in the fight to improve the situation of these people.

63. Consistent with existing human rights commitments, States should also address poverty alleviation that eliminates racial discrimination, including through the implementation of development initiatives aimed at realizing the rights of people of African descent, in a manner appropriate to their culture and identity; ensure the full, active and meaningful participation of people of African descent throughout development programme cycles; and adopt measures to preserve, protect and restore the traditional knowledge of people of African descent.

64. States should take concrete measures to eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, in particular Africans and people of African descent, including migrants and women, and ensure the full equality of all before the law, including labour law. States should ensure that workers' rights of people of African descent, including those relating to fair and equal wages, are protected, by increasing the effectiveness of legislation that prohibits all discriminatory practices in employment and the labour market that affect people of African descent, including through the implementation of special measures to promote the employment of people of African descent in public administration, as well as in private companies, including affirmative action policies such as quota systems.

65. States should involve people of African descent in designing and implementing health-based programmes and projects, ensuring that quality health services are available and accessible without discrimination, particularly in rural and marginalized areas with large populations of people of African descent, and that services are provided in a culturally appropriate manner and accessible to people of African descent, including the most vulnerable.

66. States should take all the measures necessary to give effect to the right of people of African descent, particularly children and young people, to free primary education and access to all levels and forms of quality public education without discrimination. Measures should be taken to increase the number of teachers of African descent

working in educational institutions. The Working Group also urges States to take steps aimed at removing negative stereotypes and imagery in teaching materials, by promoting more inclusive education systems, and to take measures to reduce the school dropout rate for children of African descent, with greater support and attention to families and ensuring that curricula are accessible, culturally relevant, providing education in their own language and promoting their cultural heritage, where necessary. States must implement their human rights obligations regarding the content of education.

67. States should implement special measures to ensure people of African descent have access to necessary housing services, by involving communities of people of African descent as partners in housing project construction, rehabilitation and maintenance and taking measures to ensure legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy, and prevent the forced eviction of people of African descent from their homes in both urban and rural contexts. The Working Group also urges States, in accordance with international human rights standards and their respective domestic legal frameworks, to resolve problems of ownership of ancestral lands, inhabited for generations by indigenous people and by people of African descent and illegally expropriated by colonial rulers.

68. The Working Group urges States to incorporate a gender perspective in all programmes of action against racism, racial discrimination, xenophobia and related intolerance. States, international organizations, NGOs and the private sector should consult and involve women of African descent, through a participatory and inclusive approach, in the processes and decisions relating to the elaboration and implementation of programmes and plans aimed at their social development. States should ensure that development paradigms focus on equity and equality, where issues of gender, masculinity and femininity ultimately become issues of human rights and human dignity.

69. The Working Group urges States to recognize the unique situation of youth of African descent and to implement targeted opportunities and specific measures that promote and advance the development of leadership and active participation in all sectors of society.

70. The Working Group recommends that the sustainable development goals of the United Nations development agenda beyond 2015 be applied as benchmarks by States to measure progress regarding the political, economic and social development of people of African descent. While grants and aid are welcome, the goal should be long-term development, especially in post-colonial societies.

71. The Working Group urges States to develop mechanisms of redress for violations of the right to development, concerning both people of African descent and of African States. Mechanisms should be available to all, including documented and undocumented migrant workers and asylum seekers. There should be people of African descent serving as officials in implementing these mechanisms.

72. States should ensure that the development and implementation of positive measures, aimed at accelerating the achievement of substantive equality and for securing equal access of Africans and people of African descent to opportunities, contribute to poverty reduction and lead to the empowerment of communities.

73. The Working Group encourages States to share good practices, including initiatives aimed at guaranteeing participation of people of African descent in decision-making, data collection and development policies addressing concerns of people of African descent.

74. The Working Group urges States to develop public policies that do not keep people of African descent and African countries in a state of economic dependence but rather ensure that they benefit from development on an equal footing with the rest of the population and the developed countries, while at the same time respecting their sociocultural differences.

75. The inclusion of reparations should be in line with the Durban Declaration and Programme of Action, which recognizes the contribution of historical injustices to contemporary poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity, in particular in developing countries, and the need to develop programmes for the social and economic development of these societies and the diaspora.

76. The Working Group encourages people of African descent and the African diaspora to pursue domestic redress for racism, racial discrimination, Afrophobia, xenophobia and related intolerance that impede development.

77. At the same time, the Working Group encourages people of African descent to celebrate the achievements of their ancestors and honour their memory through the truth and acknowledgement of that history which continue to undermine societies. Such strategies would represent means of self-awareness and sociocultural development.

78. The International Decade for People of African Descent should be used to build bridges of understanding and reconnect the diaspora with the continent of Africa in order to address the feelings of loss, lack of identity and absence of indigenous knowledge that plague people of African descent in the diaspora.

79. The Working Group recommends that during the International Decade for People of African Descent, the International Forum for People of African Descent should be the platform for States, civil society and the United Nations to plan concrete action for the total recognition of the rights of people of African descent. The Working Group is concerned that the Forum is not a permanent forum.

80. The Working Group looks forward to contributing to the establishment of the International Forum for People of African Descent and to the process of developing and drafting the declaration on people of African descent under the auspices of the International Decade for People of African Descent, including through its active participation in the Forum.

Annex I

Agenda

1. Opening of the session.
2. Election of the Chair-Rapporteur of the Working Group.
3. Adoption of the agenda.
4. Organization of work.
5. Briefings with regard to:
   (a) Reports submitted to the Human Rights Council and the General Assembly;
   (b) Visits to the Netherlands and Sweden by the Working Group;
   (c) Internal meeting of the Working Group;
   (d) Other activities.
6. Thematic discussion on people of African descent, with a focus on the theme "Development and people of African descent":
   (a) Keynote address;
   (b) Other presentations;
   (c) Interactive discussion with participants.
7. Adoption of the conclusions and recommendations of the Working Group made at its sixteenth session.

Annex II

[English only]

List of participants

A. Members of the Working Group

Mr. Michal Balcerzak

Ms. Mireille Fanon Mendès-France

Mr. Sabelo Gumedze

Ms. Verene Shepherd

Mr. Ricardo A. Sunga III

B. Member States

Argentina, Austria, Brazil, China, Colombia, Côte d'Ivoire, Cuba, Egypt, Ethiopia, Germany, Greece, Ireland, India, Japan, Latvia, Mexico, Morocco, Namibia, Norway, Pakistan, Panama, Portugal, Russian Federation, Rwanda, Saudi Arabia, South Africa, Spain, Sri Lanka, Switzerland, Syrian Arab Republic, Tunisia, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela (Bolivarian Republic of).

C. Non-member States

Holy See.

D. International organizations

International Labour Organization (ILO), United Nations Development Programme (UNDP), World Health Organization (WHO).

E. Intergovernmental organizations

European Union.

F. Non-governmental organizations in consultative status with the Economic and Social Council

African Commission of Health and Human Rights Promoters, Association of World Citizens, International Youth and Student Movement for the United Nations (ISMUN), Mouvement International pour les Réparations, Rencontre Africaine pour la Defense des Droits de l'Homme, World Against Racism Network.

G. Non-governmental organizations not in consultative status with the Economic and Social Council

AFROMADRID, Association des Bassas de Suisse, Association des femmes du Kwango-Kwilu 'Mukubi', Black Mental Health UK, Collectif Afro-Swiss Humaine (CREA), Culture of Afro-Indigenous Solidarity, Mouvement contre le racisme et pour l'amitié entre les peuples, SOS Rassismus Deutschschweiz.

H. Panellists and presenters

Ms. Rebeca Arias, Director, UNDP Regional Centre, Panama;

Ms. Veronica Birga, Chief, Women's Rights and Gender Section, OHCHR;

Ms. Suzanne Charles-Watson, Institute for Gender and Development Studies, University of the West Indies;

Ms. Nyaradzayi Gumbonzvanda, Secretary General, Young Women's Christian Association;

H.E. Abdul Samad Minty, Chair of the Ad Hoc Committee on the Elaboration of Complementary Standards, Ambassador of the Republic of South Africa;

Mr. Laurence Juma, Professor and Deputy Dean, Faculty of Law, Rhodes University, South Africa;

Mr. Jacques Martial, Actor and President of Établissement public du parc et de la grande halle de la Villette, Paris;

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Mr. Glenn Payot, Geneva Representative, Minority Rights Group International;

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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its sixteenth session

Addendum

Mission to the Netherlands*

Summary

This report presents the findings of the Working Group of Experts on People of African Descent on its visit to the Netherlands. It presents the legal framework pertaining to the human rights of people of African descent, underscoring some gaps in the implementation of existing laws and noting policies which would benefit from a human rights approach. The report highlights major trends, challenges and good practices, and makes recommendations.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex, is circulated in the language of submission only.

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Annex

[English only]

Report of the Working Group of Experts on People of African Descent on its mission to the Netherlands (26 June–4 July 2014)

Contents

		Page
I.	Introduction	3
II.	Overview	3
III.	Legal framework, mechanisms, policies and practices	5
	A. International level	5
	B. National level	6
	C. Policy and practices	7
	D. Data collection	9
IV.	Equality and non-discrimination	10
	A. Employment and poverty	10
	B. Education and awareness raising	12
	C. Health, housing and recreational activities	13
	D. Administration of justice	13
	E. Political participation	15
	F. Multiple discrimination	15
V.	Racism and xenophobia	16
	A. Hate crimes	16
	B. Racism in the media and on the Internet	17
	C. Racism in cultural events	18
VI.	Conclusions and recommendations	18

I. Introduction

1. At the invitation of the Government of the Netherlands, the Working Group of Experts on People of African Descent undertook a visit from 26 June 4 July 2014. The members of the delegation were the Chairperson of the Working Group, Ms. Mireille Fanon Mendes-France, and members of the Working Group, Ms. Mirjana Najchevska and Ms. Verene Shepherd.

2. The Working Group met with representatives of national and local Government both in Curaçao and the Netherlands. In Curaçao, the Working Group met with representatives from the Ministry of Social Development and Labour; the Ministry of Public Health, Environment and Nature; the Ministry of Justice; the Ministry of Foreign Affairs; the Board of Education; the Central Bureau of Statistics; the Curaçao Police and the Public Prosecutor. It conducted a visit to the only prison in Curaçao and visited a juvenile penitentiary. A meeting was also held with a member of Parliament, and two meetings were held with about 30 civil society representatives in Willemstad.

3. In The Netherlands, the Working Group met with representatives from the Ministry of Foreign Affairs; the Ministry of the Interior and Kingdom Relations; the Ministry of Education, Culture and Science; the Ministry of Social Affairs and Employment; the Ministry of Security and Justice; and the Ministry of Health, Welfare and Sport. The Working Group also held a meeting with the Mayors of Amsterdam and Rotterdam, and representatives from the local discrimination agencies in Rotterdam (Anti-Discrimination Agency in Rotterdam) and Amsterdam (*Meldpunt Discriminatie Regio Amsterdam*). The Working Group met with the Chair of the Parliamentary Committee for Security and Justice of the House of Representatives as well as with representatives from the Netherlands Institute for Human Rights; Statistics Netherlands; and the Dutch Centre for Folk Culture and Intangible Cultural Heritage and Academia. During its working visit, the Working Group visited a women's prison in Utrecht as well as a juvenile detention centre in De Heuvelrug, and met with representatives from the Public Prosecutor's office and the police in Utrecht.

4. The Working Group also met with academics, civil society and non-governmental representatives working on a wide range of human rights issues, including those of African descent. The Working Group's visit to Willemstad, Amsterdam, The Hague, Rotterdam and Middleburg enabled it to gain a broad picture of the situation of people of African descent in the country.

5. The experts wish to thank the Government of the Netherlands for its invitation and for its assistance before, during and after the visit. They would also like to thank academics and non-governmental organizations, including those of African descent, with whom they met during their visit.

II. Overview

6. The African presence in the Netherlands has a long history, dating back to the Dutch Empire's participation in the transatlantic trade in Africans and the system of African enslavement, especially in the Caribbean.

7. The Kingdom of the Netherlands went through a process of constitutional reform, which entered into force on 10 October 2010. The changes were based on referendums and consequently, Curaçao and Sint Maarten acquired the status of countries within the Kingdom similar to Aruba, which has held the status of country within the Kingdom since 1986. Nowadays, the Kingdom of the Netherlands comprises four countries: the

Netherlands, Aruba, Curaçao and Sint Maarten. The islands of Bonaire, Sint Eustatius and Saba became Special Municipalities called Caribbean Netherlands and have a separate status within the Netherlands. Together, they form the Caribbean part of the Kingdom. Enslavement was a defining period for relations based on the hierarchy of races in the Dutch Caribbean's history, and social mobility since has been linked to skin colour as well as Afrophobia and racial tensions in the present.

8. Curaçao and Sint Maarten (and Aruba) are autonomous countries within the Kingdom; however, the Kingdom of the Netherlands maintains overall responsibility on foreign affairs and defense. International treaties and Conventions can be concluded only by the Kingdom and not by its constituent parts, and apply to the Kingdom as a whole or its constituent parts individually or in any combination. Similarly, while each of the new countries has its own Government and Parliament, Antillean legislation remains in place; the Judiciary is predominantly Dutch, with the Netherlands also involved in financial oversight. The Netherlands is a European Union member State, but Curaçao and the other islands within the Kingdom are not, and have a different status as Overseas Countries and Territories. The Netherlands has representation led by a Representative in each of the three islands of Aruba, Curaçao and Sint Maarten, which serves as an outpost of the Netherlands and represents all Dutch ministries (apart from Minister of Foreign Affairs and Defence, whose responsibilities span the Kingdom as a whole) in these islands. Parliaments of the three countries and the Netherlands meet twice a year to discuss topics of mutual interest and cooperation within the Kingdom.

9. The Netherlands is also an immigration country. Official figures put the foreign population in 2012 at almost 3.5 million, or about 20 per cent of the total population. The trend began soon after the Second World War, when a significant amount of the population from the Dutch Indies moved to the Netherlands. Over the past 40 years, the number of immigrant nationalities has increased considerably.

10. Currently, immigrants in the Netherlands are not a homogeneous group. Turkish and Moroccan immigrants mostly originate from the guest workers who arrived in the 1960s and 1970s, while many Afghan, Iraqi, Iranian and Somali immigrants came to the Netherlands as refugees. The immigration of Surinamese and Antilleans is often related to the political affiliation with the Netherlands, while Poles, Bulgarians and Romanians have been finding their way to the Netherlands as the borders within the European Union have opened up. People of Turkish, Moroccan, Surinamese and Antillean origin constitute the four largest non-Western groups in the Netherlands. The size of these groups is increasing, mainly as a result of births of the second generation and to a much lesser extent of the arrival of new immigrants.

11. The same applies to the Dutch Caribbean; for example, people of more than 80 nationalities live in Curaçao. The island is receiving new immigrant communities from Colombia, the Dominican Republic, Haiti, Jamaica and the Bolivarian Republic of Venezuela. Similarly, Aruba's many immigrants have made it a highly diverse society, with almost 100 different nationalities.

12. This complex and varied history means that people of African descent in the Netherlands are a diverse and heterogeneous group. While the Dutch Caribbean has a predominant population of people of African descent, manifestations of racism and racial discrimination are prevalent. The Working Group was concerned that racial discrimination is considered a "taboo" subject and identified a lack of understanding within the society about its manifestations. As a result, cases of racial discrimination against people of African descent in Curaçao are not being reported to the authorities.

13. In spite of the Netherlands' high standards in dealing with discrimination and the establishment of institutions promoting equality, people of African descent continue to be

vulnerable to racial discrimination. As with economic migration, many people of African descent arrive in the country as asylum seekers, fleeing devastating situations of poverty, persecution and conflict. While in the post-war period the Netherlands was known as a country of tolerance, discrimination has gradually increased with the arrival of more immigrant and refugee families to the Netherlands.

14. Since the 1970s, with the independence of former colonies, concerns around non-European immigration have been expressed in racialized terms. As in several countries, the legacy of enslavement, colonial ideologies and structures of hierarchy of race and culture mean that these groups have historically been, and in many cases continue to be, victims of racism, xenophobia and discrimination, albeit with varying manifestations, resulting in socio-economic inequality, social exclusion and marginalization. The Working Group is concerned that the new political relations between Curaçao and the Netherlands, agreed in 2010, are not fully understood by many people and have a significant impact on the immigration experiences of Curaçaons to the Netherlands.

15. Racism remains a problem for people of African descent throughout the country, with growing numbers of people of Surinamese and Dutch Antillean descent expressing experiences of discrimination based on their ethnicity and skin colour. Racism is prevalent, although it remains underreported and is generally denied, downplayed or at best seen as a marginal phenomenon. As a part of this denial, the Working Group observed that Moroccans are often referred to as if they represent all people of African descent, which further undermines the diversity of this group, as a result of the structural invisibility of people of African descent.

16. The Working Group acknowledges the positive turning point that Dutch society has recently taken to engage openly the issues of racism and racial discrimination affecting its populations of African descent. This willingness is evident in the policy and administrative steps that have been taken in recent years. Nevertheless, the Working Group felt that racial discrimination was accorded less of a priority by the Government in comparison to other issues such as migration, economic and financial inequality, and politics.

III. Legal framework, mechanisms, policies and practices

A. International level

17. The Netherlands has ratified most of the core human rights instruments, many of which are particularly relevant for the rights of people of African descent living in the country.

18. The Netherlands is yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Based on its national policy regarding social provision, the Netherlands objects to the section of this Convention stating that provision should be equally accessible to migrants who are not lawfully present within the territory of the country of their destination and/or are unlawfully employed there.

19. In the view of the Working Group, the provisions of this Convention have a direct bearing on the subject of racial discrimination, and the Netherlands should consider its ratification.

20. The Netherlands acceded to the Additional Protocol to the Council of Europe's Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems on 1 November 2010. The Netherlands has also implemented the Council of the European Union's Framework Decision on Racism and Xenophobia.

B. National level

21. According to the Government, acceptance of diversity and pluralism is a value of Dutch society. The ban on discrimination is enshrined in article 1 of the Dutch Constitution.

22. Legislation covers a very broad range of offences involving incitement to hatred, discrimination and violence on the basis of race or ethnic origin and other grounds of discrimination. The principal domestic legislation against racial discrimination in the Netherlands is the General Equal Treatment Act. Additionally, the Municipal Anti-Discrimination Services Act, which entered into force on 28 July 2009, obliges municipalities to provide easily accessible facilities for handling complaints about discrimination from members of the public. The Municipal Anti-discrimination Services Act facilitates the opportunity to report discrimination in the local place of residence and to receive assistance and advice from local anti-discrimination authorities.

23. Articles 137c to 137e of the Dutch Criminal Code deal with a wide range of criminal offences involving incitement to hatred of, and publicly expressing views that are insulting to, a group of individuals on account of their race, and other grounds of discrimination.

24. Since 2009, discrimination is defined as an aggravating factor warranting a 50 per cent increase in the sentence. This figure previously was 25 per cent. As from May 2011, another aggravating factor has been incorporated for such offences, warranting a 100 per cent increase in the sentence demanded. The Public Prosecutor can apply for this latter increased sentence in case of serious criminal offences motivated by discriminatory factors.

25. Victims of discrimination perpetrated by civil servants can seek protection from the National Ombudsman and they can also sue in civil courts in order to obtain compensation for damages. A provision in the Working Conditions Act requires employers to pursue an active anti-discrimination policy.

26. The House of Representatives is kept regularly informed about the progress of efforts to tackle discrimination. Letters to Parliament on discrimination also include preventive measures, such as measures to combat discrimination in education, guidelines for website moderators to keep their websites free from discriminatory content that constitutes a criminal offence, and support from central Government to local anti-discrimination policy. The letters describe a range of methods for tracking down and prosecuting those who are discriminating.

27. During its visit, the Working Group learned that, while the Municipal Anti-Discrimination Services Act facilitated people in the Netherlands to report discrimination to an anti-discrimination service and to receive professional support if necessary, not all municipalities have an anti-discrimination policy, and the available services are not sufficiently well known to the public. Also, as has been pointed out by the European Commission against Racism and Intolerance, while the basic forms of discrimination have been made punishable pursuant to the Criminal Code, the punishable acts listed in these provisions are not prohibited on grounds of citizenship and language, creating some difficulties in the prosecution of certain racist offences. Similarly, the General Equal Treatment Act provides protection against racial discrimination, but does not protect against discrimination based on language and ethnic origin.

28. In Curaçao, there is no national human rights institution or an equality body; nor does it have any specific legislation on discrimination. The Working Group observed that cases of racial discrimination against people of African descent are rarely reported to the authorities. The Working Group is concerned that there is a lack of understanding within society about the issue and that in many cases racist ideologies have been internalized to

such an extent that some people of Dutch origin are often not aware of racist behaviour and attitudes.

29. The Working Group was particularly concerned by the so-called Bosman Act, which was being discussed in the Dutch Parliament and which aimed to minimize the rights of Dutch Antilleans, including a direct impact on their freedom of movement. The Bosman law would require Dutch Antilleans from Curaçao, Aruba, and St. Martin to apply for a residence permit from the Immigration and Naturalization Service to take up residence in the Netherlands and qualification for the permit required meeting one of the following four criteria: applicants have to have a job, or enough money to support themselves, they have to be admitted to a Dutch school, or have a close relative living in the Netherlands. An immediate impact of this would be the exclusion of Antilleans in the Netherlands from Government assistance such as social security and social housing.

C. Policy and practices

30. The Dutch policy aimed at combating discrimination is general in nature and not aimed at specific groups. As a result, there are no positive measures addressing the specific needs of people of African descent. In the view of the Working Group, this may result in indirect discrimination and insufficient attention being paid to the rights of people of African descent. The Working Group believes it is important to develop a broad national policy, which specifically focuses on racial discrimination and inequality affecting people of African Descent. The Working Group takes this opportunity to encourage the Government to raise awareness among the public and Government officials alike about the International Decade for People of African Descent.

31. While there is no comprehensive Action Plan for Combating Racism and Racial Discrimination at a national level, the Netherlands' National Action Plan on Human Rights has a section dedicated to non-discrimination and equal treatment. The implementation of the Nation Action Plan has established easily accessible local anti-discrimination helpdesks which can assist people who feel discriminated against; a simple and accessible procedure for reporting incidents involving discrimination; a new national anti-hate crimes campaign with a dedicated website; uniform registration of all complaints involving discrimination; annual reporting to Parliament on results and developments (every year the Government sends the House of Representatives a letter on action taken to combat discrimination); and intensified education about racism and the Holocaust as a part of the school curriculum, among others.

32. The Working Group welcomes the establishment of the National Institute for Human Rights on 2 October 2012. It is an independent body that provides various parties, including the Government, with advice on issues relating to equal treatment and dealing with discrimination on any ground. The institute's advice is not legally binding. The mandate of this institution also allows it to conduct investigations, report and make recommendations on the protection of human rights, provide advice and information, and encourage the ratification and observance of treaties related to human rights.

33. The Institute took over the competencies of the Equal Treatment Commission, a semi-judicial independent body that dealt with complaints on violations of the General Equal Treatment Act and issued recommendations with a view to implement equal treatment standards. As a result, a specific division within the Netherlands Institute for Human Rights will be responsible for the activities previously carried out by the Equal Treatment Commission.

34. The Working Group hopes that the Institute will contribute to increased visibility of human rights issues affecting people of African descent as a vulnerable group. The

Working Group urges the Dutch authorities to increase the political support to this institution in order to strengthen the authority of its decisions and improve their enforcement. Also, the Working Group calls on the Government to ensure the financial independence of the National Institute for Human Rights, in application of the Paris Principles standards.

35. While the Netherlands has a National Ombudsman, its mandate encompasses the handling of complaints concerning the action of administrative authorities. However, the Ombudsman is not competent to receive complaints on Government policy or on the content of laws. The Working Group met with civil society organizations that were highly sceptical of the work of the National Ombudsman in terms of its impartiality and independence, as well as its lack of powers in giving binding decisions.

36. A new network of local anti-discrimination services is in place and provides protection against and registers complaints of racism and racial discrimination. In addition, each of the 11 regional Public Prosecutor's offices in the Netherlands has a specially trained Public Prosecutor who handles all discrimination cases in the region. Besides registering and processing discrimination complaints, these local services can perform other tasks, such as providing information on discrimination in schools and businesses. In addition, they cooperate with the Public Prosecution Service and the police at the local level to prevent and combat discrimination.

37. The Government's new decentralized approach to dealing with discrimination demonstrates recognition of the problem of discrimination at local levels. The Working Group welcomes the requirement of municipal governments to establish anti-discrimination desks through which victims of discrimination, including people of African descent will be able to lodge official complaints. The Working Group looks forward to hearing about the progress of these local initiatives, but stresses that this localized approach does not relieve the central Government of its duties to continue to work against racial discrimination.

38. The Public Prosecution Service determines whether a particular action is an offence or not. For this purpose, it has set up a special expertise centre, the National Discrimination Expertise Centre. Public Prosecutors can contact the centre for advice. The National Expertise Centre on Discrimination has been placed under the auspices of the Amsterdam Office of the Public Prosecution Service with the aim of optimizing criminal enforcement in cases of discrimination. The main duties of the National Expertise Centre on Discrimination include: carrying out a substantive legal evaluation of discrimination cases; advising the Offices of the Public Prosecution Service; keeping a registration system of discrimination cases; and contributing to the development of the national policy for combating discrimination within the Public Prosecutor Service.

39. The Public Prosecution Service and the police also have specific instructions on discrimination in force and are required to keep a record of every report and formal complaint of discrimination, including specific racist offences, as well as general offences with racist motivation. The instructions are a binding guideline for the Public Prosecutor and the police on how to handle in discrimination cases; they offer directives for the cooperation between the Public Prosecutor, the police, the local Government and the anti-discrimination bureaus; directives on the procedure on registration and complaints; directives on the investigation and prosecution, including the appointment of regional prosecutors and police officers specialized in dealing with discrimination and racist offences; and directives on how to treat victims.

40. The Government has encouraged people to report acts of discrimination through local anti-discrimination authorities but also through hotlines and online forms and, more recently, a special app that allows people to anonymously report racial incidents. These have been paired with large-scale campaigns to raise awareness of discrimination, increase

the victims' willingness to report incidents on discrimination, and explain the available resources for victims of discrimination.

41. The Netherlands has also developed an interactive instrument and website (www.diversiteitsindex.nl) called diversity index, which shows a breakdown of employees of certain public bodies according to a broad scale of indicators like gender, ethnicity and age.

42. There are five ministries structurally involved in anti-discrimination policies: the Ministry of Social Affairs and Employment (responsible for combating discrimination in the labour market, integration policies, and combating racism and anti-Semitism); the Ministry of Education, Culture and Science (responsible for the emancipation policies for women and lesbian, gay, bisexual and transgender people); the Ministry of Security and Justice (responsible for the criminal code); the Ministry of Health, Welfare and Sport (responsible for the equal treatment of the disabled and chronically ill); and the Ministry of the Interior and Kingdom Relations (responsible for the Constitution, General Equal Treatment Act and the Municipal Anti-Discrimination Services Act; also responsible for the overall coordination of anti-discrimination policies).

43. Every year, the Minister of the Interior and Kingdom Relations sends the House of Representatives a letter on action taken to combat discrimination. This letter describes the progress of the measures taken by the Government to combat discrimination and aims to gain a better understanding of the problems involved. The Ministry of the Interior and Kingdom Relations is also responsible for the Municipal Anti-Discrimination Services Act. All the municipalities report to the Ministry of the Interior every year about complaints on discrimination, which gives the Government a good insight in trends and developments.

44. The Working Group was pleased to learn about the work being carried out by the Ministry of the Interior and Kingdom Relations, including promoting the implementation of the General Equal Treatment Act and the civil law protection against discrimination; drawing up guidelines for the anti-discrimination services and the municipalities to improve the quality of anti-discrimination services; and issuing a media campaign to improve the awareness amongst the public about discrimination and stereotyping.

45. The Working Group stresses the importance of consultation with vulnerable groups, including people of African descent, on policies, practices and legislation that affects them. In this regard, a National Consultation Platform on Minorities (Landelijk Overleg Minderheden) was established in 1997. Representatives of the Chinese, Turkish, Southern European, Caribbean, Surinamese and Moroccan minorities group are a part of this consultative body, while the Roma and Sinti have been excluded from it. Furthermore, the National Consultation Platform on Minorities does not meet regularly and there is a bill before Parliament proposing the dismantlement of the platform. The Working Group recommends that the mandate and structure of the Consultation Platform should be strengthened and funded in order to improve the consultation mechanisms with all minority groups, including people of African descent.

D. Data collection

46. Since 2008, the police have been producing a national crime pattern analysis of all discrimination incidents known to the police, i.e. discrimination offences and other types of offences with a discriminatory element. Commissioned by the National Expertise Centre Diversity, the annual POLDIS report is published with data including on racial discrimination. The Public Prosecution Service also produces an annual analysis of the discrimination cases it processes.

47. Since 2009, steps have been taken to improve data collection to make the registration of discrimination more transparent and consistent. The improvement project set up by the Police Diversity Expertise Centre is being carried out. However, underreporting and under registration remains a structural problem.

48. In addition, other institutions collect data about ethnic discrimination, such as specialized agencies against discrimination, the National Human Rights Institute, and the Registration Bureau for Discrimination on the Internet. Periodic "Monitors" are published on racial and other kinds of discrimination. This data offers an indication but not an accurate picture of the prevalence, scale and character of discrimination in the Netherlands.

49. There is still a lack of ethnically disaggregated data in both the Netherlands and Curaçao which would help reveal patterns of discrimination and inequality against people of African descent. Statistics Netherland, the Dutch Statistics Agency, collects data on the population living in the Netherlands broken down by country of birth and periodically publishes statistical tables on the living conditions of its national and foreign population in various fields of life. Persons are also classified as being allochtone (a person with a foreign background) or autochtone (a native) and belonging to distinctive groups such as African or Non-Western (e.g. "Somali", "African" and non-Western) . Allochtones are persons who were either born outside the Netherlands or who have at least one parent who was born abroad – which may also include persons who are Dutch citizens.

50. This system of data collection is not based on the principle of self-identification and does not allow for the monitoring of the situation of people of African descent. In addition, as noted by the European Commission against Racism and Intolerance, as the number of citizens who are second-generation descendants of persons born outside the Netherlands increases, the classification on the basis of "allochthony" will be less and less apt to monitor patterns of racial discrimination. Whilst considering the European Union ruling on Data Protection, the Working Group emphasizes the importance of such data when collected in a responsible manner that respects human rights and privacy.

51. The Working Group welcomes the proactive approach that the Government has taken in the collection of disaggregated data, including by ethnicity. Despite trends in Europe, the Netherlands has not abolished the collection of disaggregated data. Knowing that the Dutch Government attaches importance to a good information system, and has recently invested in upgrading its information system, the Working Group highlights the importance of the collection and publication of disaggregated data on the basis of ethnicity by the governmental statistics agency, and recommends data collection based on the principle of self-identification to allow for the monitoring of the situation of people of African descent and identification of the specific needs of people of African descent.

52. The existence of disaggregated data on ethnicity is to enable private and public organizations to monitor equal opportunities/anti-discrimination policies, and for resource allocation and service provision. Such data may also be necessary to inform the Government as to whether community programmes are reaching all groups and in revealing the patterns of exclusion and discrimination that people of African descent face, in order to enable it to adopt practical public policies.

IV. Equality and non-discrimination

A. Employment and poverty

53. The Working Group was informed that people of African descent experience disproportionate rates of poverty and unemployment. Poverty is the main challenge faced

by people of African descent in the Netherlands, compounded by wage gaps, high unemployment, lack of political participation and lack of effective national institutions to change the situation.

54. Government support for civil society organizations dealing with black heritage or black communities was reportedly dwindling. In addition, new legislation aimed at combating poverty was being handed over to local city councils with a view to cut further costs, which in their view would have a negative impact on communities inhabited by people of African descent.

55. The global economic crisis has seriously affected employment in the Netherlands, particularly among young people. The Government currently provides a range of financial benefits for the unemployed, the data for which provides a good indication of poverty rates, in which people of African descent are overly represented.

56. Discrimination against people of African descent in the area of access to employment remains a concern. The workforce does not reflect the true diversity of society. Surinamese and Dutch Antillean people face rates of unemployment three times higher than that of white Dutch people. Reports have shown that employment agencies discriminate in the selection of applicants, in the different levels of pay, and other distinctions in the labour market.

57. The Social and Economic Council of the Netherlands, a national advice body, publishes a report on discrimination on the labour market. This body attributes a large part of racial discrimination to the stereotyping and stigma of ethnic minority groups, which is present throughout Dutch society. While people who feel discriminated against by their employer can report these instances to the local anti-discrimination bureaus or the Netherlands Institute for Human Rights, as well as to the courts, employment discrimination is still underreported.

58. The Government has taken measures against employers who knowingly discriminate, including "naming and shaming" companies that discriminate. The Government announced the implementation of a policy to cease doing business with companies that have been convicted of discrimination. Other measures include the Social Cohesion Initiative and the establishment of the National Diversity Management Network. However, the rates of unemployment amongst people of African descent and other ethnic minority groups, particularly women, and younger persons between 18 and 25 years of age, are significantly higher than average.

59. The Working Group stressed the need for a legislative framework to address this problem and was pleased to learn about a draft law being discussed in Parliament. The Netherlands still needs to implement further measures to address discrimination in the labour market, making employers aware of their responsibility to select in an ethnically neutral manner, not based on a person's origins, skin colour or name.

60. The participation of ethnic minorities in the public sector is also important to address discrimination. The Working Group was pleased to learn that the Dutch Government has devised a diversity index to help different branches of the public sector implement their policy on diversity and to monitor the development of diversity in terms of sex, age and ethnicity on an annual basis. Nevertheless, people of African descent still account for an extremely low percentage of employees within the public sector. The Working Group is particularly concerned at the underrepresentation of people of African descent in senior positions in the public and private sectors.

B. Education and awareness raising

61. Access to quality and culturally relevant education is invaluable for the empowerment of people of African descent. During the visit to Curaçao, the Working Group observed that there were very few opportunities for children to study in the local language, leaving many, including those who speak Papiamento, at a disadvantage.

62. The Dutch education system is Eurocentric, dominated by the Dutch language, history and literature over local perspectives. While steps have been taken to include teaching on the history of the transatlantic slave trade, the Working Group is concerned that African history prior to and after the slave trade, and the contributions of Africans and people of African descent to national and world development, continue to be invisible in the curriculum.

63. The Working Group welcomes the information received from the Ministry of Education, Culture and Science, which ensured that in the curriculum of compulsory primary and secondary education due attention is paid to important subjects such as enslavement, colonialism and the present-day multicultural society. At the same time, civil society organizations that met with the Working Group stressed that school curricula give very little to no attention to the history of enslavement. According to them, the vast majority of Dutch society is simply not educated on this topic. The black pages of the so-called "Dutch golden age" are rarely addressed, and if so, it is not done justice. The Working Group stresses the importance of involving African-descendant communities in the design of the school curriculum, to ensure their inclusion in the true history of Africa before, during and after European contact, and their identity and contribution to the development of Dutch society.

64. While primary and secondary schools in the Netherlands are required by law to promote good citizenship and social integration, and the Ministry of Foreign Affairs commissioned the creation of a programme that schools can use to support teaching on citizenship and human rights, the Working Group is concerned by the absence of human rights education within the national curriculum, which is fundamental for fostering relations within society based on mutual respect and dialogue.

65. Another concern is that of racist bullying in schools. The Working Group observes that dropout rates are particularly high for boys and is concerned that they feel alienated from the school environment. Further, the lack of free tertiary education is discouraging many from attending university.

66. Of particular concern is the ethnic segregation in schools in cities with a diverse population. According to information provided, pupils from ethnic minority groups are disproportionally referred to special education, partly because of behavioural and psychological problems. As pointed out by the Committee on the Elimination of Racial Discrimination, measures such as the establishment of the Mixed Schools Knowledge Centre and the role assigned to the Education Inspectorate in promoting integration have proved inadequate. The Working Group wishes to remind the Government of the role of schools in promoting mutual respect and understanding, and the need to take measures to eradicate all forms of ethnic segregation in schools, including through the review of admissions policies which may have the effect of creating or exacerbating this phenomenon and other disincentives to such segregation.

67. The Working Group is aware of the educational role of cultural institutions such as museums, archives and heritage organizations to document the traces of the past and the Netherlands' shared cultural heritage, including enslavement, the colonial past and the history of migrant groups. During its visit to Middleburg, the Working Group was pleased to learn about the work done by the Zeeland Archives on the transatlantic slave trade. It

urges the Government to ensure the research carried out for this project is widely disseminated and used as an educational tool among schools and at all levels in society as part of the vital process for breaking the silence about the country's role in the slave trade, which perpetuates the invisibility of people of African descent.

68. The Working Group met members of civil society who raised concerns about the measures taken in the wake of the economic crisis, which are having a particularly devastating impact on the fight against racism and discrimination. Financial cutbacks have led to significantly reduced funding for civil society organizations, including those working on important research projects into racism, which are invaluable for designing policy and programmes to address concerns of people of African descent.

C. Health, housing and recreational activities

69. The Working Group appreciates the steps taken to promote equality in health; however, access to health for many people of African descent remains a key concern. Similarly, although the Working Group was informed that the Government actively targets discrimination in housing provision, including guidelines and a national platform devised to tackle antisocial behaviour and residential decay, people are still subjected to harassment on the grounds of their ethnicity, which forces them out of their homes.

70. The Working Group also received concerning information about the prevalence of discrimination in the admissions policies and practices of fitness centres, catering establishments and places of entertainment. Institutional discrimination and mechanisms of exclusion of people of African descent lead to unequal access to employment, housing and other services.

71. During its visit to Curaçao, the Working Group observed that major oil refineries had caused environmental damage, including to local fishing, which is a main activity in Curaçao, and that the Government had not undertaken actions to remedy the damages.

D. Administration of justice

1. Access to justice

72. The Working Group was informed that people of African descent who are victims of discrimination may seek recourse to justice. There are a number of specific offences related to discrimination and it is the policy of the Public Prosecution Service to count the discriminatory aspect of an offence as an aggravating factor when deciding what sentence to require. However, as noted by the European Commission against Racism and Intolerance, the acts listed in the criminal law provisions against racism and racial discrimination are not prohibited on grounds of citizenship and language, and there is no provision explicitly establishing racist motivation as a specific aggravating circumstance in sentencing.

73. Similarly, although the Curaçao Criminal Code makes several acts of discrimination criminal offences, the Working Group felt that, owing to a lack of mechanisms and awareness, complaints and cases related to racial discrimination in the island were largely underreported.

74. The Working Group was pleased to learn that the Public Prosecution Service has issued instructions to all Public Prosecutors to increase the penalty they demand from the court by 100 per cent in cases in which the offence was motivated by any kind of discrimination. Furthermore, in order to encourage people to lodge criminal complaints with the police in cases of discrimination, the Government has implemented several

measures, including the improvement and simplification of the criminal complaint process, the duty to keep victims informed of the progress of the case (Victims' Status Act, 2011), and the launching of a national hate crimes campaign.

75. While the Government has implemented measures to raise public awareness of discrimination and encourage victims to report offences, the Working Group feels that there is still underreporting and underprosecution of such crimes. In fact, very few cases of racially motivated offences had been brought to courts.

2. Persons in conflict with the law

76. People of African descent raised serious issues regarding racial disproportionality in all aspects of the administration and functioning of the justice system. During the Working Group's meeting with civil society, the issue of disproportionate use of stop and search powers by the police on young males of African descent was repeatedly raised as a concern. As is the case in many countries around the world, people of African descent in the Netherlands are the victims of racial profiling by the police. As a result of this practice, people of African descent represent a disproportionate percentage of the prison population.

77. Civil society representatives also gave detailed accounts of police brutality that were racially biased, incidents of unlawful identification checks, harassment and higher proportionality of fines among certain ethnic groups. As an additional consequence, feelings of mistrust in law enforcement bodies arise among communities and discourage them from accessing help when they are victims of crime or rights abuses.

78. Civil society and academia reported that, despite efforts at the community level between the police and youth and residents, very little had changed. They felt that there was no recognition of ethnic, structural and institutional discrimination, and there was not an effective, independent and impartial complaints mechanism within the police. Perceptions persist that the police act with impunity in some localities.

79. While some steps have been taken to adopt policies to tackle racism and racial discrimination by police and judicial authorities, in practice unconscious bias and differential treatment of prisoners by staff, particularly in the use of discretionary powers, is still commonplace. The Working Group was also informed about a bill pending before the House of Representatives that would increase the powers of the police in carrying out searches, although requiring that the police comply with objective criteria for their stop and search activities.

80. According to information received from the Anti-Discrimination Agency in Rotterdam, based on a study carried out by the Fundamental Rights Agency in 2009, up to 23 per cent of Dutch Surinamese report ethnic profiling and 34 per cent of Dutch Moroccans report such incidents. In the 2013 Dutch survey, these numbers were 17 per cent for Surinamese men, 15 per cent for Dutch Antillean men and 26 per cent for Dutch Moroccan men. Again, this concerning issue remains underreported and is often denied by the authorities.

81. In Curaçao , the Working Group visited the only prison in the island, the Sentro di Detenshon i Korekshon Korsou, and found that it lacked in some basic services, including the provision of water supplies for detainees, which, among other issues, resulted in unbearable conditions due to the hot weather. Although occupancy was below total capacity, members of rival gangs or nationalities were kept separately, leading to crowded cell areas. There was very little information available on rehabilitation and mental health facilities for inmates.

82. The Working Group noted the positive development with regard to the construction of new blocks at the Juvenile Detention Centre, and the programmes and facilities, which were found to be in general compliance with international standards.

3. People of African descent working in the administration of justice system

83. The Working Group observed that in both the Netherlands and Curaçao the majority of justice officials, including lawyers, are of white Dutch descent. While some efforts have been made to increase the number of people of African descent working across the justice system, particularly within the police service, the Working Group is still concerned at the significantly low numbers of people of African descent working as employees in the Netherlands administration of justice system.

84. The Working Group also learned that there were limited possibilities to learn the Dutch legal system and it was highly inaccessible to ordinary Curaçaons. The University of Curaçao has a law faculty where Curaçaon law (very similar to Dutch law) can be studied. Though after studying law, one still has to obtain additional training in the Netherlands before being able to open a law practice. As a consequence, there are very few native Curaçaon judges in the court system in Curaçao. The Working Group's request to meet the Ombudsman for further clarity in this matter was not successful.

85. The Working Group highlights the importance of greater representation of people of African descent in these roles. It welcomes the work of the Ombudsman on selection of police staff, police violence, preventive body searches and immigration detention.

E. Political participation

86. The Working Group was concerned to learn about the lack of participation of Curaçaons in the political process involved in the development of legislation of the Netherlands. It was also informed about budget cuts to Curaçao that would have helped in the fight against discrimination. Curaçaons also expressed dissatisfaction that, due to their limited political participation, their voice is not heard in the international arena, which would further cement their autonomous status.

87. The Working Group feels that the Government needs to take additional steps to change the historic underrepresentation of people of African descent in politics in the Netherlands both as political figures, as institutional figures in Curaçao, and as active participants in political processes.

F. Multiple discrimination

1. Women and girls

88. Women of African descent in the Netherlands suffer compounded discrimination based on racial or ethnic origin, skin colour, socioeconomic status, gender, religion and other status, which requires intersectional analysis to understand the situation. Domestic violence, trafficking in persons and sexual exploitation are also manifestations of the intersecting forms of discrimination that women and girls of African descent may face. Women and girls of African descent are also vulnerable to particular health risks. Poverty has a gendered nature.

89. In Curaçao, despite being better educated than men, women have limited employment opportunities. Women are limited in terms of political participation: in 2014, men held 15 of the Government seats in the National Parliament, while women occupied only 6. Women held only two of the nine cabinet posts in the Government.

90. The Working Group encourages the Government to draw attention to the situation of women of African descent, many of whom face multiple forms of discrimination.

2. Migrants, asylum seekers and refugees

91. The Netherlands is a country of immigration and asylum. Owing to a combination of language barriers and discrimination, migrants, asylum seekers and refugees face barriers in accessing information about services, particularly concerning health, education and employment, and have limited access to health care and other protection systems. Civil society reported that irregular migrants are more likely to face discrimination, exclusion and abuse, because of their vulnerable situation, and often work in informal and exploitative conditions from which they cannot seek protection.

92. The Working Group heard allegations from migrants in irregular situations of being prevented from having access to adequate health care, or from renting suitable accommodation. Migrants can be detained without having committed a recognizably criminal offence. Additionally, the association of irregular migration with criminality promotes the stigmatization of migrants and provokes a climate of xenophobia against them.

93. The Working Group was pleased that high numbers of asylum seekers are recognized in the Netherlands. Nevertheless, the Working Group fears that current policy and processes for seeking asylum in the Netherlands leads to large numbers of stateless people. This is also a concern in Curaçao, where there are citizens from a number of countries, notably a large number of Cuban children in situations of statelessness who consequently have not been able to access their fundamental rights. The Working Group also received information about the continued practice of detaining unaccompanied children and families with children upon their arrival. The Government needs to revise its policy to better accommodate those seeking asylum in the country in accordance with its obligations under the Convention on the Rights of the Child.

94. The Working Group noted differences in dealing with discrimination and in the implementation of international standards between the Netherlands and Curaçao. Of particular concern to the Working Group, as a result of the new political relations after 2010, was the impact on immigration experiences of Curaçaons to the Netherlands, which has resulted in the prevalence of differential treatment of Curaçaon citizens at Dutch borders in the form of additional screening and security checks.

95. The Working Group believes that the Government should revise the provisions in the Civic Integration Act that impose obstacles in immigrants' integration when they fail to pass the civic integration examination, often jeopardizing their stay in the Netherlands or their family reunification. Human rights should be at the forefront of any discussion on migration in the country.

V. Racism and xenophobia

A. Hate crimes

96. Legislation in the Netherlands covers a very broad range of offences involving incitement to hatred, discrimination and violence on the basis of race. While laws exist to prosecute racial and religious hate crimes, specifically cases of incitement to hatred, discrimination and violence, people of African descent in the Netherlands continue to be the victims of such crimes and other manifestations of racism and intolerance. Incidents of

racist and xenophobic speech emanating from a few extremist political parties are of particular concern.

97. The Government has put in place measures to report hate crime to the police. While there has been an increase in reports of racially motivated crimes and hate crimes, the numbers of prosecutions and convictions based on hate crimes are still low.

98. Additional measures need to be in place in order to prevent and eradicate manifestations of racism, racial discrimination, Afrophobia, xenophobia and intolerance. The Government should also adopt measures to encourage a positive climate of public and political dialogue.

B. Racism in the media and on the Internet

99. Racism in the media continues to be a problem affecting people of African descent, including migrants and asylum seekers. The Working Group values the Government position with regards to the right to freedom of expression, ensuring the use of criminal prosecution as a last resort. However, the Working Group thinks that greater attention should be placed on cases of incitement to hatred, discrimination and violence in the media, which have increased due to the influence of fears of terrorism and the rise of immigration in the country.

100. The Working Group is concerned that the economic crisis has heightened xenophobic and racist attitudes against migrant and refugee communities, including many people of African descent, and feels that the media has played a role in exacerbating fears around housing and employment using migrants as scapegoats for the negative impact that the crisis has had on Dutch people. The Working Group urges the Government to take steps to ensure no media outlet engages in incitement to racial, religious or xenophobic hatred that could lead to further rights violations. Additionally, the Government needs to take appropriate action if the media commit an offence of racial discrimination.

101. The Working Group was informed by the Ministry of Education, Culture and Science about measures adopted to create an enabling environment for a varied and representative media system, while respecting the Media Act. The Government mentioned that a number of television channels and radio stations focus specifically on a diverse cultural group of people. The Working Group learned that national broadcasters have signed a performance contract with the Government in order to reach out to a better representation of people of non-Western descent and of women in broadcasting programmes. At the same time, the Working Group learned that, due to the budget cuts from the central Government, the production company MTNL (Multicultural Television in the Netherlands), which produced multicultural programmes for the Dutch broadcasting system, was dissolved by the end of 2012. While the objectives of this production company have been integrated within the local broadcasting station Amsterdam (AT5), the Working Group is concerned that budgetary measures are impacting diversity in the media.

102. The Working Group is alarmed at the amount of cases of discrimination on the Internet, many of which are affecting people of African descent. While the Government has set up or subsidized initiatives to identify and remove discriminatory postings and racist materials, encouraging people to report incidents through different means, the Working Group remains concerned that the dissemination of such material through the Internet remains widespread.

103. As with the traditional media, the Working Group learned that budget cuts have affected the Government's measures to combat online dissemination based on racial superiority. The Netherlands needs to intensify its efforts to effectively identify and remove material that amounts to online hate speech.

C. Racism in cultural events

104. The Sinterklaas festival is an important cultural tradition in the Netherlands. "Sinterklaas" is a Dutch character that arrives annually at a parade wearing a red cape on a steamboat filled with gifts together with his helpers, all referred to as "Zwarte Piet".

105. "Zwarte Piet" remains the subject of debate in the Netherlands. According to our findings, while a large part of the Dutch population prefers the traditional Black Pete, there are more and more groups willing to experiment with new forms of celebrating the feast. Furthermore, there are groups who experience Black Pete as an expression of racism and discrimination related to enslavement. Civil Society members and a number of United Nations Special Procedures have expressed concern about the Zwarte Piet and Sinterklaas festival.

106. The Working Group feels that a large amount of the population still does not understand why the manner in which "Zwarte Piet" is presented is perceived negatively and hurtful by some groups of Dutch society. In the view of the Working Group, this is a symptom of denial of the existence of racism and racist practices and an erroneous understanding of history among its society. It is also a mark of structural racism affecting the society.

107. The Working Group is pleased that the issue is now being seriously discussed at the national level but urges the Government to take a more active role in facilitating a public discussion and dialogue with regards to the racial implications of this tradition. The Working Group also believes that more measures need to be in place to encourage the media to adopt a respectful tone during these public discussions.

108. The Dutch Government does not see it as its role to impose changes in the tradition top down, and the Working Group is not calling for the banning of this tradition. Nevertheless, the Working Group was extremely pleased to learn about the work being done by the City of Amsterdam to change the image of Black Pete as well as the discussions that the Ministry of Social Affairs and Development will facilitate among several societal organizations to work towards a joint agreement. The Working Group further welcomes the court's decision, issued during its visit, concerning the Mayor of Amsterdam to reassess the license he granted for the entry of Sinterklaas last year. The Working Group also notes with appreciation the public education initiatives that have been promoted around the festival.

109. At the same time, the Working Group has followed events subsequent to its visit to the country and noted with concern developments including the upholding of the appeal of the Mayor of Amsterdam in relation to the earlier decision, and efforts underway by the Dutch Centre for Intangible Cultural Heritage (VIE) to add the Sinterklaas festival to the national inventory of intangible heritage. The Sinterklaas festival in its current form is in need of change to eliminate elements linked to enslavement that are offensive to people of African descent. The image of Black Pete stereotypes Africans and people of African descent in image and behaviour, not unlike the tradition of blackface and minstrelsy of the past era. The Working Group therefore encourages the Government to adopt all measures necessary to encourage Dutch society to examine the unequal power relations between the characters of Black Pete and Sinterklaas, and adopt changes before any such institutional polices are adopted.

VI. Conclusions and recommendations

110. **The Working Group of Experts on People of African Descent believes that no country is free of racism, and the Netherlands is no exception. While the Netherlands**

has a long tradition of tolerance and openness, and values diversity, the country has for a long time denied the existence of racism and racist practices, thus obscuring the existence of structural and institutional racism leading to the invisibility of people of African descent. Recognition of the complex history of people of African descent in the Netherlands, including the legacy of the slave trade, enslavement, the colonial past, longstanding historical, economic and political relations with several Caribbean countries and new waves of immigration, is a necessary step towards the elimination of barriers affecting the ability of people of African descent to enjoy their fundamental rights.

111. Tackling racism and racial discrimination requires a holistic approach, reaching out to and including all levels of society. The Netherlands has adopted a broad range of anti-discrimination initiatives. Despite these achievements, its general approach to combatting discrimination risks overshadowing the inequalities faced by people of African descent and may not reflect their diversity of experiences and needs. The Working Group recommends the adoption of specific policies directly targeting people of African descent and tailored to their specific situation. Such policies should encompass all people of African descent, whether nationals or immigrants, and mainstream a gender perspective, taking into account the specific needs and realities of women and girls of African descent. The Working Group also recommends the establishment of an equality body in Curaçao and a network of local anti-discrimination services.

112. The Working Group believes firmly that targeted policies and affirmative action policies should be adopted in order to promote effective equality of people of African descent, specifically to address the following issues, among others: low access to quality education; high dropout rates and overrepresentation of African descendants in special classes; lack of sufficient political participation of people of African descent; lack of appropriate representation of people of African descent in public sector employment, especially in the judiciary, police, army and other branches of the civil service; lack of adequate reflection of the Netherlands' diversity in the higher ranks of the civil service; and insufficient participation of people of African descent in the private labour market.

113. The Working Group suggests that the Government enhance and strengthen the mobilization of people of African descent and migrants as active citizens through the promotion of inclusion and capacity-building initiatives, with particular focus on women and youth as agents of change.

114. While the Netherlands has ratified most of the core human rights instruments and its national legal framework covers a broad range of offences related to racial discrimination, the protection offered by the law is not always sufficient to overcome persistent and structural disparities specifically affecting people of African descent. The Netherlands should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and adopting legislation to address the specific needs of people of African descent.

115. The Netherlands has improved in the field of data collection and analysis, which allowed the Working Group to obtain information on people of African descent. However, further efforts need to be in place in order to ensure that this data leads to targeted positive measures towards people of African descent.

116. The Working Group remains concerned that racial profiling is still a common practice, despite the measures adopted by the Government to prevent this practice. The disproportionate numbers of people of African descent in conflict with the law and in prisons shows that further action is needed to modify institutionalized

stereotypes concerning people of African descent. Measures should be adopted to increase the number of people of African descent in the law enforcement and justice system, including the police forces. Furthermore, stop-and-search powers without reasonable suspicion, which lead to racial profiling, should be abolished. The Working Group reminds the Government that this practice damages trust and confidence in the justice system, and has a serious impact on individuals of African descent, communities and the wider society.

117. The Working Group recommends the inclusion in the curriculum of information on the slave trade, enslavement and colonialism as a way to combat racism, racial discrimination, xenophobia and related intolerance.

118. Anti-racist human rights training for all public officials, including personnel in the administration of justice, particularly law enforcement, correctional and security services, as well as health care, education and migration officials, should be undertaken to counter stigmatization and to ensure that people of African descent are not discriminated against, and are treated equally.

119. The Netherlands has adopted several measures to raise awareness about racial discrimination and facilitate reporting of these cases to authorities. Additional measures are needed to guarantee access to justice and legal remedies for people of African descent who are victims of racism and increase confidence in the judicial system, including simplifying judicial procedures where possible. The Working Group encourages the Government to adopt effective legislation that guarantees higher penalties for racially motivated crimes. Denial and lack of understanding of the existence of racism and racist practices in Dutch society have influenced the underreporting and underprosecution of racial discrimination cases, including instances of hate crimes.

120. It is important to extend the scope of data collected on hate crimes, including through victim surveys, encouraging hate crime victims and witnesses to report incidents, and through psychological and financial support to victims introducing legal recourse.

121. Incidents of racism and xenophobia in the media are growing. The Government should work with media and Internet service providers to sensitize them about their role in promoting diversity and eradicating stereotypes, which foster fear of minorities and foreigners, and lead to incidents of racism and xenophobia. Media professionals require training and sensitization to promote more positive and inclusive representations of people of African descent, and increase their visibility and contribution to the economy, culture and development of the Netherlands.

122. The Working Group is aware that Sinterklaas is one of the most popular traditions in the Netherlands and that it is an important family tradition. It values the Government's and civil society's willingness to engage in positive and open dialogue, cooperation and action to combat the historic legacy of racism and discrimination against people of African descent, and encourages the continuation of discussions where both sides are heard and listen to each other. Despite these positive steps, the Working Group remains concerned about how this cultural practice affects people of African descent, and encourages the Government and civil society to continue to educate and raise awareness particularly of children on the problematic aspects of this celebration.

123. The Working Group is concerned that austerity measures adopted in response to the economic crisis could threaten the achievements in the promotion of equality and multiculturalism. The responses to the crisis must not lead to reduction in support to existing initiatives to combat racial discrimination, give rise to more discrimination

against people of African descent or exacerbate their already precarious economic conditions. As people of African descent disproportionately need social benefits, new measures could impact negatively on this group.

124. The Working Group is alarmed at the differences in equality conditions between the Netherlands and Curaçao. It recommends that programmes be put in place that bridge the gap between the standards in the same Kingdom. The Working Group is particularly concerned about the lack of an effective national institution to protect and promote human rights in Curaçao; the serious problems faced by children as a result of their statelessness in Curaçao; the lack of access to education at all levels in Papiamento in Curaçao; the low numbers of native Curaçaon lawyers and judges; the few programmes and employment opportunities available specifically for youths of African descent in Curaçao; the insufficient measures to address gender-based violence; and the lack of technical and financial assistance available to curb the damages resulting from environmental degradation in Curaçao.

125. The Working Group recommends that the Netherlands increase its financial support to Curaçao, including funds to combat racism and racial discrimination. Furthermore, it recommends that all legislative proposals that result in differential treatment to Dutch citizens from Aruba, St. Maarten or Curaçao affecting their freedom of movement within the Kingdom be repealed. The Government also needs to increase Curaçaon political participation in the international arena, particularly in areas where it is directly involved.

126. The Working Group believes that if these recommendations are accepted and there is political will to implement them, the Netherlands will move towards being a more open and harmonious society, accepting diversity based on the principles of equality and non-discrimination. It will be seen to be responding to the calls in society for it to acknowledge the historic reasons for the current situation of people of African descent, and moving to address them.